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SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 2

CHANGE OF NAME

9-2-101. Name change — Procedure.

CASE NOTES

Contest.

Because a child might encounter difficulties, harassment, or embarrassment from bearing the father's surname (since the father was incarcerated in relation to the mother's death), and because the father had not made any serious attempts at visiting the child, it was in the child's best

interests to change the child's surname. Walker v. Burton, 2011 Ark. App. 439, 384 S.W.3d 605 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 525 (Ark. Ct. App. Aug. 24, 2011).

CHAPTER 3

DOMICILE

SECTION.
9-3-108. [Repealed.]
9-3-109. [Repealed.]

9-3-108. [Repealed.]

Publisher's Notes. This section, concerning the effect of marriage to resident, was repealed by Acts 2013, No 1152, § 1. The section was derived from Acts 1941, No. 355, § 8; A.S.A. 1947, § 34-1308.

9-3-109. [Repealed.]

Publisher's Notes. This section, concerning the status of women who lost domicile by marriage, was repealed by Acts 2013, No 1152, § 2. The section was derived from Acts 1941, No. 355, § 9; A.S.A. 1947, § 34-1309.

CHAPTER 5

ARKANSAS CHILD SAFETY CENTER ACT

SECTION.
9-5-103. Definitions.
9-5-110. Interagency memorandum of understanding.

9-5-103. Definitions.

As used in this chapter:

(1)(A) "Child safety center" means a not-for-profit child-friendly facility that provides a location for forensic interviews and forensic medical examinations and ensures access for specialized mental health services during the course of a child maltreatment investigation.

(B) A "child safety center" is commonly known as a child advocacy center; and

(2) "Commission" means the Arkansas Child Abuse/Rape/Domestic Violence Commission.

History. Acts 2007, No. 703, § 5; 2013, No. 568, § 1.

Amendments. The 2013 amendment redesignated former (1) as (1)(A); substituted "ensures access for specialized mental health services" for "forensic mental health examinations" in (1)(A); and added (1)(B).

9-5-110. Interagency memorandum of understanding.

(a) Before a child safety center may be established under this chapter, a memorandum of understanding regarding the agreement on the levels of participation of each entity shall be executed among:

(1) The Division of Children and Family Services of the Department of Human Services;

(2) The Crimes Against Children Division of the Department of Arkansas State Police;

(3) Representatives of county and municipal law enforcement agencies that investigate child abuse in the area to be served by the child safety center; and

(4) The prosecuting attorney.

(b) A memorandum of understanding executed under this section shall include the agreement on the levels of each entity's participation and cooperation in:

(1) Developing a cooperative, multidisciplinary-team approach to investigations of child abuse;

(2) Reducing, to the greatest extent possible, the number of interviews required of a victim of child abuse with the goal of minimizing the negative impact of the investigation on the child; and

(3) Developing, maintaining, and supporting, through the child safety center, an environment that emphasizes the best interests of children and that provides best practices in child abuse investigations.

(c) A memorandum of understanding executed under this section may include the agreement of one (1) or more participating entities to provide office space and administrative services necessary for the child safety center's operation.

(d) A memorandum of understanding executed under this section shall include the following provisions that:

(1) When available and appropriate during the course of a child maltreatment investigation on reports of alleged sexual abuse, and when appropriate, alleged severe physical abuse, the child safety center shall be utilized for forensic interviews and forensic medical examinations and will ensure access for specialized mental health services; and

(2) The person who conducts the forensic interview shall be:

(A) Adequately trained in interviewing child victims; and

(B) Prepared to testify in any administrative or judicial proceeding regarding the forensic interview.

History. Acts 2007, No. 703, § 5; 2011, No. 783, § 1; 2013, No. 568, § 2.

Amendments. The 2011 amendment added (d).

The 2013 amendment substituted "will ensure access for specialized mental health services" for "forensic mental health examinations" in (d)(1).

SUBTITLE 2. DOMESTIC RELATIONS

CHAPTER 8
GENERAL PROVISIONS

SUBCHAPTER.
2. Arkansas Subsidized Guardianship Act.
3. Restrictions on Unmarried Adults as Adoptive or Foster Parents.

Subchapter 2 — Arkansas Subsidized Guardianship Act

SECTION.
9-8-204. Eligibility.
9-8-205. Guardianship subsidy agreement.

9-8-204. Eligibility.

A child is eligible for a guardianship subsidy if the Department of Human Services determines the following:

(1) The child has been removed from the custody of his or her parent or parents as a result of a judicial determination to the effect that continuation in the custody of the parent or parents would be contrary to the welfare of the child;

(2) The department is responsible for the placement and care of the child;

(3) Being returned home or being adopted is not an appropriate permanency option for the child;

(4) Permanent placement with a guardian is in the best interest of the child;

(5) The child demonstrates a strong attachment to the prospective guardian, and the guardian has a strong commitment to caring permanently for the child;

(6) With respect to a child who has attained fourteen (14) years of age, the child has been consulted regarding the guardianship;

(7) The necessary degree of relationship exists between the prospective guardian and the child;

(8) The child:

(A) Is eligible for Title IV-E foster care maintenance payments; or

(B) The department determines that adequate funding is available for the guardianship subsidy for a child who is not Title IV-E eligible;

(9) The home of the prospective guardian complies with any applicable rules promulgated by the:

(A) Child Welfare Agency Review Board for foster home licensure; and

(B) Department of Human Services for foster home approval; and

(10) While in the custody of the department, the child resided in the home of the prospective relative guardian for at least six (6) consecutive

months after the prospective guardian's home was opened as a foster home.

History. Acts 2007, No. 621, § 1; 2009, No. 325, § 1; 2011, No. 592, § 1.

Amendments. The 2011 amendment deleted the (a) designation from the introductory paragraph; and deleted (b); deleted (7) and (9) and redesignated the remaining subdivisions accordingly; deleted "If permitted or required by the funding stream" at the beginning of present (7); rewrote (8)(B); and added (9) and (10).

9-8-205. Guardianship subsidy agreement.

(a) A written guardianship subsidy agreement must be entered before the guardianship is established.

(b) The guardianship subsidy agreement shall become effective upon entry of the order granting guardianship.

(c) No guardianship subsidy may be made for any child who has attained eighteen (18) years of age unless permitted by the funding stream.

History. Acts 2007, No. 621, § 1; 2013, No. 577, § 1.

Amendments. The 2013 amendment deleted former (c) and redesignated former (d) as (c).

Subchapter 3 — Restrictions on Unmarried Adults as Adoptive or Foster Parents

SECTION.

9-8-301 — 9-8-306. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2013, No. 1152, § 3. This subchapter was derived from the following sources:

9-8-301. Init. Meas. 2008, No. 1, § 5.
9-8-302. Init. Meas. 2008, No. 1, § 4.
9-8-303. Init. Meas. 2008, No. 1, § 3.
9-8-304. Init. Meas. 2008, No. 1, § 1.
9-8-305. Init. Meas. 2008, No. 1, § 2.
9-8-306. Init. Meas. 2008, No. 1, § 6.

CHAPTER 9

ADOPTION

SUBCHAPTER.

Subchapter 1 — General Provisions

9-9-102. Religious preference — Removal of barriers to inter-ethnic adoption — Preference to relative caregivers for a child in foster care.

(a) In all custodial placements by the Department of Human Services in foster care or adoption, the court shall give preferential consideration to an adult relative over a nonrelated caregiver, provided that the relative caregiver meets all relevant child protection standards and it is in the best interest of the child to be placed with the relative caregiver.

(b) If the genetic parent or parents of the child express a preference for placing the child in a foster home or an adoptive home of the same or a similar religious background to that of the genetic parent or parents, the court shall place the child with a family that meets the genetic parent's religious preference, or if a family is not available, to a family of a different religious background that is knowledgeable and appreciative of the child's religious background.

(c) The court shall not deny a petition for adoption on the basis of race, color, or national origin of the adoptive parent or the child involved.

History. Acts 1987, No. 857, § 1; 1995, No. 956, § 1; 1997, No. 216, § 1; 2011, No. 591, § 2.

Amendments. The 2011 amendment, in (a), substituted "adoption, the court shall give" for "investigations conducted by the department pursuant to court order under § 9-9-212" and deleted "shall be given" following "consideration"; deleted former (b); and redesignated the remaining subsections accordingly.

CASE NOTES

Consideration.

Appellants claimed error in the trial court's finding that it was in the child's best interests that he be adopted by appellees, and appellants pointed to subsection (a) of this section for preferential consideration purposes; however, keeping in mind the standard of review, the court affirmed the trial court's best interest finding because it was not clearly contrary to the preponderance of the evidence, and the trial court was faced with choosing between two suitable adoptive homes. Wilson v. Golen, 2013 Ark. App. 267, — S.W.3d — (2013).

9-9-105. Employee leave for adoption.

(a) As used in this section, "employer" means public and private employers, including state departments, agencies, and political subdivisions.

(b)(1) An employer that permits paternity leave or maternity leave for a biological parent after the birth of a child shall permit paternity or

maternity leave for an adoptive parent upon placement of an adoptive child in the adoptive parent's home if requested by the adoptive parent.

(2) If the employer has established a policy that provides leave time for a biological parent after the birth of a child, the same policy shall apply to an adoptive parent upon placement of an adoptive child in the adoptive parent's home.

(3) A request for additional leave due to the placement and adoption of an ill child or a child with a disability shall be considered by the employer on the same basis as comparable cases of complications accompanying the birth of a child to an employee or employee's spouse.

(c) Any other benefit provided by an employer, such as job guarantee or pay guarantee, shall be available to both biological parents and adoptive parents equally.

(d) An employer shall not penalize an employee for exercising his or her rights under this section.

(e) This section does not apply to an adoption:

(1) By the spouse of a custodial parent;

(2) Of a person over eighteen (18) years of age; or

(3) Of a foster child by the child's foster parents.

History. Acts 2011, No. 1235, § 2.

Subchapter 2 — Revised Uniform Adoption Act

Effective Dates. Acts 2013, No. 282, § 17: Mar. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one-year period; that the effectiveness of this act as soon as possible is essential to the operation of the judiciary and the administration of justice; and that this act is immediately necessary because the delay in the effective date of this act could cause irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

9-9-202. Definitions.

CASE NOTES

Cited: Scudder v. Ramsey, 2013 Ark. 115, — S.W.3d — (2013).

9-9-204. Who may adopt.

RESEARCH REFERENCES

ALR. Adoption of Child by Same-Sex Partners. 61 A.L.R.6th 1.

CASE NOTES

Standing to Adopt.

Case law and this section, recognizing the right of foster parents to adopt a foster child, was not superseded by the juvenile code. Schubert v. Ark. Dep't of Human Servs., 2010 Ark. App. 113, — S.W.3d — (2010).

9-9-205. Jurisdiction — Venue — Inconvenient forum — Disclosure of name.

(a) Jurisdiction of adoption of minors:

(1) The state shall possess jurisdiction over the adoption of a minor if the person seeking to adopt the child, or the child, is a resident of this state.

(2) For purposes of this subchapter:

(A) A child under the age of six (6) months shall be considered a resident of this state if the:

(i) Child's birth mother resided in Arkansas for more than four (4) months immediately preceding the birth of the child;

(ii) Child was born in this state or in any border city that adjoins the Arkansas state line or is separated only by a navigable river from an Arkansas city that adjoins the Arkansas state line; and

(iii) Child remains in this state until the interlocutory decree has been entered, or in the case of a nonresident adoptive family, upon the receipt of approval pursuant to the Interstate Compact on the Placement of Children, § 9-29-201 et seq., the child and the prospective adoptive parents may go back to their state of residence and subsequently may return to Arkansas for a hearing on the petition for adoption;

(B) A child over the age of six (6) months shall be considered a resident of this state if the child:

(i) Has resided in this state for a period of six (6) months;

(ii) Currently resides in Arkansas; and

(iii) Is present in this state at the time the petition for adoption is filed and heard by a court having appropriate jurisdiction; and

(C) A person seeking to adopt is a resident of this state if the person:

(i) Occupies a dwelling within the state;

(ii) Has a present intent to remain within the state for a period of time; and

(iii) Manifests the genuineness of that intent by establishing an ongoing physical presence within the state together with indications that the person's presence within the state is something other than merely transitory in nature.

(3)(A) If the juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the adoption petition shall be filed in that case.

(B) The circuit court shall retain jurisdiction to issue orders of adoption, interlocutory or final, when a juvenile is placed outside the State of Arkansas.

(4) A petition for adoption may not be asserted in a guardianship proceeding, but a separate action shall be filed, and the clerk shall assign a new case number and charge a filing fee unless the filing fee is waived under Rule 72 of the Arkansas Rules of Civil Procedure.

(b) Jurisdiction of adoption of adults: Physical presence of the petitioner or petitioners or the individual to be adopted shall be sufficient to confer subject matter jurisdiction.

(c) Venue:

(1) Proceedings for adoption must be brought in the county in which, at the time of filing or granting the petition, the petitioner or petitioners, or the individual to be adopted resides or is in military service or in which the agency having the care, custody, or control of the minor is located;

(2) If the court finds in the interest of substantial justice that the matter should be heard in another forum, the court may transfer, stay, or dismiss the proceedings in whole or in part on any conditions that are just.

(d) The caption of a petition for adoption shall be styled substantially "In the matter of the Adoption..." The person to be adopted shall be designated in the caption under the name by which he or she is to be known if the petition is granted.

(e) If the child is placed for adoption, any name by which the child was previously known may be disclosed in the petition, the notice of hearing, or in the decree of adoption.

(f) In the event the child dies during the time that the child is placed in the home of an adoptive parent or parents for the purpose of adoption, the court has the authority to enter a final decree of adoption after the child's death upon the request of the adoptive parent.

History. Acts 1977, No. 735, § 5; A.S.A. 1947, § 56-205; Acts 1991, No. 658, § 1; 2001, No. 383, § 1; 2001, No. 1029, § 1; 2003, No. 650, §§ 1, 8; 2007, No. 539, §§ 1, 2; 2013, No. 282, § 1.

Amendments. The 2013 amendment added (a)(4).

9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.

(a) Unless consent is not required under § 9-9-207, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

(1) The mother of the minor;

(2) The father of the minor if:

(A) The father was married to the mother at the time the minor was conceived or at any time thereafter;

(B) The minor is his child by adoption;

(C) He has physical custody of the minor at the time the petition is filed;

(D) He has a written order granting him legal custody of the minor at the time the petition for adoption is filed;

(E) A court has adjudicated him to be the legal father prior to the time the petition for adoption is filed;

(F) He proves a significant custodial, personal, or financial relationship existed with the minor before the petition for adoption is filed; or

(G) He has acknowledged paternity under § 9-10-120(a);

(3) Any person lawfully entitled to custody of the minor or empowered to consent;

(4) The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption;

(5) The minor, if more than twelve (12) years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and

(6) The spouse of the minor to be adopted.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

(c) Under no circumstances may a parent or guardian of a minor receive a fee, compensation, or any other thing of value as a consideration for the relinquishment of a minor for adoption. However, incidental costs for prenatal, delivery, and postnatal care may be assessed, including reasonable housing costs, food, clothing, general maintenance, and medical expenses, if they are reimbursements for expenses incurred or fees for services rendered. Any parent or guardian who unlawfully accepts compensation or any other thing of value as a consideration for the relinquishment of a minor shall be guilty of a Class C felony.

History. Acts 1977, No. 735, § 6; 1979, No. 599, § 2; 1985, No. 467, § 1; A.S.A. 1947, § 56-206; Acts 2005, No. 437, § 1; 2007, No. 539, § 3; 2011, No. 607, § 1; 2013, No. 1054, § 1.

Amendments. The 2011 amendment substituted "twelve (12)" for "ten (10)" in (a)(5).

The 2013 amendment added designations (a)(2)(A) through (a)(2)(F); and added (a)(2)(G).

CASE NOTES

Analysis

Application.
Parents.
Refusal to Consent.

Application.

It was not erroneous for a trial court to terminate a mother's parental rights to the mother's children without obtaining the children's consent, under subdivision (a)(5) of this section, to the children's adoption because (1) the issue was first raised on appeal, and (2) the statute did not apply to termination proceedings in dependency-neglect cases. Brabon v. Ark. Dep't of Human Servs., 2012 Ark. App. 2, 388 S.W.3d 69 (2012).

Court properly denied appellants' petition for adoption because the state, the child's legal guardian, did not consent; additionally, the child had to repeat a grade while residing with appellants, and the child's personality, behavior, and performance at school improved following her removal from appellants' home. The court found that the adoptive parent placed and would place an emphasis on meeting the child's educational needs, that she was devoted to the child, and that she had a loving and appropriate home. Cowan v. Ark. Dep't of Human Servs., 2012 Ark. App. 576, — S.W.3d — (2012).

Parents.

Trial court erred in granting a petition for adoption and in holding that the putative father's consent was not required because the birth mother clearly thwarted the father's efforts to comply with subdivision (a)(2) of this section; the father not only filed with the putative-father registries in four states but also filed paternity actions in both Texas and Arkansas. In re Baby Boy B., 2012 Ark. 92, 394 S.W.3d 837 (2012).

Refusal to Consent.

Evidence did not support a finding that the Arkansas Department of Human Services (DHS) unreasonably withheld its consent to appellants' adoption of a child under subdivision (a)(3) of this section; appellants' adult son lived in their home and an uncle lived in substandard housing on the property without DHS's knowledge while appellants were foster parents. Lewis v. Ark. Dep't of Human Servs., 2012 Ark. App. 347, — S.W.3d — (2012).

9-9-207. Persons as to whom consent not required.

RESEARCH REFERENCES

ALR. Requirements and Effects of Putative Father Registries. 28 A.L.R.6th 349.

CASE NOTES

Analysis

Constitutionality.
Construction.
Consent Required.
Failure to Communicate or Support.
Proof.
Unreasonable Withholding of Consent.

Constitutionality.

Subdivision (a)(11) of this section was not applied to the father in a discriminatory manner because he never registered with the Arkansas Putative Father Registry; hence, he lacked standing to challenge

the constitutionality of the statute. Racine v. Nelson, 2011 Ark. 50, 378 S.W.3d 93 (2011).

Construction.

Under subdivision (a)(2) of this section, "failed significantly" does not mean "failed totally." It only means that the failure must be significant, as contrasted with an insignificant failure. Racine v. Nelson, 2011 Ark. 50, 378 S.W.3d 93 (2011).

Phrase "failed significantly" in subdivision (a)(2) of this section does not mean "failed totally." It denotes a failure that is meaningful or important. Fox v. Nagle, 2011 Ark. App. 178, 381 S.W.3d 900 (2011), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 302 (Apr. 13, 2011), review denied, — S.W.3d —, 2011 Ark. LEXIS 383 (Ark. Apr. 28, 2011).

Consent Required.

Despite the claim that the father had not seen the child for over one year, the father's consent was required for the stepfather to adopt the child, where the father claimed that the mother would not let the father see the child because the father had not been paying child support and the father's family testified the mother changed her phone number without telling them. Havard v. Clark, 2011 Ark. App. 86, — S.W.3d — (2011).

Court properly denied appellants' petition for adoption because the state, the child's legal guardian, did not consent; additionally, the child had to repeat a grade while residing with appellants, and the child's personality, behavior, and performance at school improved following her removal from appellants' home. The court found that the adoptive parent placed and would place an emphasis on meeting the child's educational needs, that she was devoted to the child, and that she had a loving and appropriate home. Cowan v. Ark. Dep't of Human Servs., 2012 Ark. App. 576, — S.W.3d — (2012).

Failure to Communicate or Support.

Trial court properly granted a mother's petition for adoption of the parties' biological child because the father's consent was not required under subdivision (a)(2) of this section due to the fact that he failed, without justifiable cause, to establish communication or financial support to the child; a $750 check was the only form of financial assistance given to the mother for the child throughout the child's life. Racine v. Nelson, 2011 Ark. 50, 378 S.W.3d 93 (2011).

Trial court erred under subdivision (a)(2) of this section in determining that a father's consent was not required to the adoption of his child by the child's stepfather because the father did not fail significantly without justifiable cause to communicate with the child; over the course of the statutory one-year period, the father saw the child on numerous occasions. The father took the child to a family reunion and a family birthday party. Fox v. Nagle, 2011 Ark. App. 178, 381 S.W.3d 900 (2011), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 302 (Apr. 13, 2011), review denied, — S.W.3d —, 2011 Ark. LEXIS 383 (Ark. Apr. 28, 2011).

One-year period set out in subdivision (a)(2) of this section may be any one-year period, not merely the one-year period preceding the filing of the adoption petition. Fox v. Nagle, 2011 Ark. App. 178, 381 S.W.3d 900 (2011), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 302 (Apr. 13, 2011), review denied, — S.W.3d —, 2011 Ark. LEXIS 383 (Ark. Apr. 28, 2011).

Because a father failed to provide child support for only nine months, his consent was required for adoption of the child under subdivision (a)(2) of this section. Havard v. Clark, 2011 Ark. App. 734, — S.W.3d — (2011).

Trial court did not err under subdivision (a)(2) of this section in granting the adoption of a child without the mother's consent because the mother failed significantly without justifiable cause to support the child for one year; she had not paid any support in several years. She made no effort to contribute to the child's support even after she obtained a job. Lucas v. Jones, 2012 Ark. 365, — S.W.3d — (2012).

It is not required that a parent fail "totally" in their obligations in order to fail "significantly" within the meaning of subdivision (a)(2) of this section. It only means that the failure must be significant, as contrasted with an insignificant failure. Lucas v. Jones, 2012 Ark. 365, — S.W.3d — (2012).

Proof.

In granting a petition for a mother's husband to adopt the parties' child, a trial

court did not err in finding that the father's consent was not necessary under subdivision (a)(2) of this section because, by the father's own testimony, he had not seen his child in over two years; he made no child support payments after being released from prison until he received the adoption petition. Courtney v. Ward, 2012 Ark. App. 148, 391 S.W.3d 686 (2012).

Unreasonable Withholding of Consent.

Order granting foster parents' petition for adoption of a child and dismissing a maternal grandmother's petition for guardianship was proper; in finding that the Arkansas Department of Human Services had unreasonably withheld its consent to the adoption under subdivision (a)(8) of this section, the trial court did not err by giving effect to the statutory preference for adoption. Davis-Lewallen v. Clegg, 2010 Ark. App. 627, 378 S.W.3d 185 (2010).

Evidence did not support a finding that the Arkansas Department of Human Services (DHS) unreasonably withheld its consent to appellants' adoption of a child under subdivision (a)(8) of this section; appellants' adult son lived in their home and an uncle lived in substandard housing on the property without DHS's knowledge while appellants were foster parents. Lewis v. Ark. Dep't of Human Servs., 2012 Ark. App. 347, — S.W.3d — (2012).

9-9-210. Petition for adoption.

(a) A petition for adoption signed and verified by the petitioner, shall be filed with the clerk of the court, and state:

(1) The date and place of birth of the individual to be adopted, if known;

(2) The name to be used for the individual to be adopted;

(3) The date the petitioner:

(A) Acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how the petitioner acquired custody of the minor; or

(B) Was selected to adopt the minor by the child placement agency licensed by the Child Welfare Agency Review Board;

(4) The full name, age, place, and duration of residence of the petitioner;

(5) The marital status of the petitioner, including the date and place of marriage, if married;

(6) That the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted;

(7) A description and estimate of value of any property of the individual to be adopted;

(8) The name of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of his normally required consent, to the adoption; and

(9) In cases involving a child born to a mother unmarried at the time of the child's birth, a statement that an inquiry has been made to the Putative Father Registry and either:

(A) No information has been filed in regard to the child born to this mother; or

(B) Information is contained in the registry.

(b) A certified copy of the birth certificate or verfication of birth record of the individual to be adopted, if available, and the required consents and relinquishments shall be filed with the clerk.

History. Acts 1977, No. 735, § 10; A.S.A. 1947, § 56-210; Acts 1989, No. 496, § 6; 2011, No. 607, § 2.

Amendments. The 2011 amendment subdivided (a)(3) and added the (a)(3)(A) designation and (a)(3)(B).

9-9-212. Hearing on petition — Requirements.

(a)(1) Before any hearing on a petition, the period in which the relinquishment may be withdrawn under § 9-9-220 or in which consent may be withdrawn under § 9-9-209, whichever is applicable, must have expired.

(2) No orders of adoption, interlocutory or final, may be entered prior to the period for withdrawal.

(3) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition.

(4) At least twenty (20) days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to:

(A) Any agency or person whose consent to the adoption is required by this subchapter but who has not consented;

(B) A person whose consent is dispensed with upon any ground mentioned in § 9-9-207(a)(1), (2), (6), (8), and (9); and

(C) Any putative father who has signed an acknowledgement of paternity or has registered with the state's Putative Father Registry.

(5)(A) When the petitioner alleges that any person entitled to notice cannot be located, the court shall appoint an attorney ad litem who shall make a reasonable effort to locate and serve notice upon the person entitled to notice; and upon failing to so serve actual notice, the attorney ad litem shall publish a notice of the hearing directed to the person entitled to notice in a newspaper having general circulation in the county one (1) time a week for four (4) weeks, the last publication being at least seven (7) days prior to the hearing.

(B) Before the hearing, the attorney ad litem shall file a proof of publication and an affidavit reciting the efforts made to locate and serve actual notice upon the person entitled to notice.

(b)(1)(A) Before placement of the child in the home of the petitioner, a home study shall be conducted by any child welfare agency licensed under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., or any licensed certified social worker.

(B) Home studies on non-Arkansas residents may also be conducted by a person or agency in the same state as the person wishing to adopt as long as the person or agency is authorized under the law of that state to conduct home studies for adoptive purposes.

(2) The Department of Human Services shall not be ordered by any court to conduct an adoptive home study, unless:

(A)(i) The court has first determined the responsible party to be indigent; or

(ii) The child to be adopted is the subject of an open dependency-neglect case and the goal of the case is adoption; and

(B) The person to be studied lives in the State of Arkansas.

(3) All home studies shall be prepared and submitted in conformity with the regulations promulgated pursuant to the Child Welfare Agency Licensing Act, § 9-28-401 et seq.

(4)(A) The home study shall address whether the adoptive home is a suitable home and shall include a recommendation as to the approval of the petitioner as an adoptive parent.

(B) A written report of the home study shall be filed with the court before the petition is heard.

(C) The home study shall contain an evaluation of the prospective adoption with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or minor.

(5)(A) The home study shall include a state-of-residence criminal background check, if available, and national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation on the adoptive parents and all household members eighteen (18) years of age and older, excluding children in foster care.

(B) If a prospective adoptive parent has lived in a state for at least six (6) years immediately prior to adoption, then only a state-of-residence criminal background check shall be required.

(C) If the Department of Human Services has responsibility for placement and care of the child to be adopted, the home study shall include a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation on the prospective adoptive parents and all household members eighteen (18) years of age or older, excluding children in foster care.

(D) Upon request by the Department of Human Services, local law enforcement shall provide the Department of Human Services with local criminal background information on the prospective adoptive parents and all household members eighteen (18) years of age and older who have applied to be an adoptive family.

(6) A Child Maltreatment Central Registry check shall be required for all household members age fourteen (14) and older, excluding children in foster care, as a part of the home study, if such a registry is available in their state of residence.

(7) Additional national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation are not required for international adoptions as they are already a part of the requirements for adoption of the United States Department of Homeland Security, Citizenship and Immigration Services.

(8) Each prospective adoptive parent shall be responsible for payment of the costs of the criminal background checks, both the in-state check and the Federal Bureau of Investigation check if applicable, and

shall be required to cooperate with the requirements of the Department of Arkansas State Police and the Child Maltreatment Central Registry, if available, with regard to the criminal and central registry background checks, including, but not limited to, signing a release of information.

(9)(A) Upon completion of the criminal record checks, the Department of Arkansas State Police shall forward all information obtained to either the Department of Human Services if it is conducting the home study, to the agency, to the licensed certified social worker, or to the court in which the adoption petition will be filed.

(B) The Department of Arkansas State Police shall forward all information obtained from the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation to either the Department of Human Services, if it is doing the home study, or to the court in which the adoption petition will be filed.

(C) The circuit clerk of the county where the petition for adoption has been or will be filed shall keep a record of the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation for the court.

(c)(1) Unless directed by the court, a home study is not required in cases in which the person to be adopted is an adult. The court may also waive the requirement for a home study when a stepparent is the petitioner or the petitioner and the minor are related to each other in the second degree.

(2) The home study shall not be waived when the case is a fast-track adoption of a Garrett's Law baby under § 9-9-702.

(d)(1) After the filing of a petition to adopt an adult, the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented.

(2) The court may order a home study to assist it in determining whether the adoption is in the best interest of the persons involved.

(3) The Department of Human Services shall not be ordered by any court to conduct a home study unless:

(A)(i) The court has first determined the responsible party to be indigent; or

(ii) The person to be adopted is the subject of an open dependency-neglect case and the goal of the case is adoption; and

(B) The person to be studied lives in the State of Arkansas.

(4) All home studies shall be prepared and submitted in conformity with the regulations promulgated pursuant to the Child Welfare Agency Licensing Act, § 9-28-401 et seq.

(e)(1) Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the court by order directs.

(2) Proof of the giving of the notice shall be filed with the court before the petition is heard.

(3) Where consent is not required, notice may be by certified mail with return receipt requested.

(f) When one (1) parent of a child or children is deceased, and the parent-child relationship has not been eliminated at the time of death, and adoption proceedings are instituted subsequent to such decease, the parents of the deceased parent shall be notified under the procedures prescribed in this subchapter of such adoption proceedings, except when the surviving parent-child relationship has been terminated pursuant to § 9-27-341.

(g)(1)(A) Except as provided under subdivision (g)(2) of this section, before placement for adoption, the licensed adoption agency or, when an agency is not involved, the person, entity, or organization handling the adoption shall compile and provide to the prospective adoptive parents a detailed, written health history and genetic and social history of the child that excludes information that would identify birth parents or members of a birth parent's family.

(B) The detailed, written health history and genetic and social history shall be set forth in a document that is separate from any document containing information identifying the birth parents or members of a birth parent's family.

(C) The detailed, written health history and genetic and social history shall be clearly identified and shall be filed with the clerk before the entry of the adoption decree.

(D) Upon order of the court for good cause shown, the clerk may tender to a person identified by the court a copy of the detailed, written health history and genetic and social history.

(2) Unless directed by the court, a detailed, written health history and genetic and social history of the child is not required if:

(A) The person to be adopted is an adult;

(B) The petitioner is a stepparent; or

(C) The petitioner and the child to be adopted are related to each other within the second degree of consanguinity.

History. Acts 1977, No. 735, § 12; 1979, No. 599, §§ 3, 4; 1983, No. 324, § 1; 1985, No. 445, §§ 1, 2; A.S.A. 1947, § 56-212; Acts 1991, No. 774, § 3; 1991, No. 1214, § 1; 1993, No. 1204, § 1; 1995, No. 1067, § 1; 1997, No. 1106, § 1; 2003, No. 650, § 3; 2005, No. 437, § 4; 2005, No. 1689, § 1; 2007, No. 539, § 4; 2009, No. 724, § 1; 2011, No. 1235, § 1; 2013, No. 471, § 1.

Amendments. The 2011 amendment inserted (a)(4)(C).

The 2013 amendment substituted "fourteen (14)" for "ten (10)" in (b)(6).

CASE NOTES

Home Study.

For purposes of this section, appellants claimed that the failure to file a home study for the adoption of the child was jurisdictional and required reversal; however, under § 28-1-104(5), the trial court had jurisdiction to determine the child's adoption and any error in relying on appellees' home study had to be raised in the trial court, and the court affirmed on this point without reaching the merits of the argument because it was not preserved for review, as appellees' home study was admitted without objection and appellants did not raise their argument below and it was not considered by the trial court. Wilson v. Golen, 2013 Ark. App. 267, — S.W.3d — (2013).

9-9-213. Required residence of minor.

(a) A final decree of adoption shall not be issued and an interlocutory decree of adoption does not become final until the minor to be adopted, other than a stepchild of the petitioner, has lived in the home for at least six (6) months after placement by an agency or for at least six (6) months after the petition for adoption is filed.

(b) Residence in the home is not required for a minor to be adopted if the minor is in the custody of the Department of Human Services, and the minor must reside outside of the home to receive medically necessary health care.

History. Acts 1977, No. 735, § 13; A.S.A. 1947, § 56-213; Acts 1999, No. 518, § 1; 2011, No. 607, § 3; 2013, No. 471, § 2.

Amendments. The 2011 amendment added the (a) designation and (b).

The 2013 amendment deleted designations (b)(1) and (b)(2); and substituted "and the minor" for "The minor" in present (b).

9-9-214. Appearance — Continuance — Disposition of petition.

CASE NOTES

Best Interest of the Child.

Trial court did not err under subsection (d) of this section in dismissing appellants' petition for adoption of a child for whom they had been foster parents because their adult son lived in their home and an uncle lived in substandard housing on the property without the knowledge of the Arkansas Department of Human Services. Lewis v. Ark. Dep't of Human Servs., 2012 Ark. App. 347, — S.W.3d — (2012).

9-9-215. Effect of decree of adoption.

(a) A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:

(1) Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the biological parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his or her biological relatives, including his or her biological parents, so that the adopted individual thereafter is a stranger to his or her former relatives for all purposes. This includes inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship. However, in cases where a biological or adoptive parent dies before a petition for adoption has been filed by a step-parent of the minor to be adopted the court may grant visitation rights to the parents of the deceased biological or adoptive parent of the child if such parents of the deceased biological or adoptive parent had a close relationship with the child prior to the filing of a petition for

step-parent adoption, and if such visitation rights are in the best interests of the child. The foregoing provision shall not apply to the parents of a deceased putative father who has not legally established his paternity prior to the filing of a petition for adoption by a step-parent. For the purposes of this section, "step-parent" means an individual who is the spouse or surviving spouse of the biological or adoptive parent of a child but who is not a biological or adoptive parent of the child.

(2) To create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.

(b) An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it shall be as though void from its issuance, and the rights, liabilities, and status of all affected persons which have not become vested shall be governed accordingly.

(c) Sibling visitation shall not terminate if the adopted child was in the custody of the Department of Human Services and had a sibling who was not adopted by the same family and before adoption the circuit court in the juvenile dependency-neglect or families-in-need-of-services case has determined that it is in the best interests of the siblings to visit and has ordered visitation between the siblings to occur after the adoption.

History. Acts 1977, No. 735, § 15; 1983, No. 324, § 2; 1985, No. 403, § 2; A.S.A. 1947, § 56-215; Acts 1995, No. 889, § 1; 2005, No. 437, §§ 5, 6; 2011, No. 607, § 4.

Amendments. The 2011 amendment, in (c), substituted "visit" for "continue visitation" and "occur" for "continue."

CASE NOTES

Termination of Legal Relationships.

Mother's adoption by adoptive parents severed a grandmother's relationship with the mother (her daughter), and therefore, the grandmother was no longer a grandparent entitled to visitation under § 9-13-103(b)(2) with the mother's child. The circuit court erred by continuing to recognize the grandmother's visitation rights following the adoption. Scudder v. Ramsey, 2013 Ark. 115, — S.W.3d — (2013).

9-9-216. Appeal from and validation of adoption decree.

CASE NOTES

Analysis

Fraud.
Limitation of Actions.

Fraud.

Where a mother of minor children alleged that she consented to adoption of her children by her former husband's second wife due to fraud, duress, and intimidation, the trial court had jurisdiction to hear her petition to set aside the interlocutory adoption decree pursuant to this section; the 90-day limitation in Ark. R. Civ. P. 60 was inapplicable based on the finding of fraud. Smith v. Smith, 2012 Ark. App. 6, — S.W.3d — (2012).

Limitation of Actions.

Trial court did not err in finding that a mother's petition to set aside the interlocutory adoption decree with respect to her minor children was not barred by the one-year limitation period in this section, as the action was commenced within that time period; once the action was commenced, the limitation period was tolled. Smith v. Smith, 2012 Ark. App. 6, — S.W.3d — (2012).

9-9-220. Relinquishment and termination of parent and child relationship.

CASE NOTES

Custody.

Trial court did not err in terminating a father's parental rights to his child after his wife gave the baby up for adoption because the father did not have custody within the meaning of subdivision (c)(3) of this section, due to his frequently living with his parents rather than his wife and his failure to support or even see the baby. D.L.R. v. N.K., 2012 Ark. App. 316, — S.W.3d — (2012).

Subchapter 3 — Children in Public Custody — Consent to Adoption

SECTION.
9-9-303. [Repealed.]

9-9-303. [Repealed.]

Publisher's Notes. This section concerning administrative reviewers of petitions for appointment of guardian was repealed by Acts 2013, No. 1152, § 4. The section was derived from Acts 1977, No. 195, § 2; 1985, No. 322, § 1; 1985, No. 424, § 1; A.S.A. 1947, § 56-127; Acts 1987, No. 778, § 2; 1989, No. 273, § 47.

Subchapter 4 — Arkansas Subsidized Adoption Act

SECTION.
9-9-404. Administration — Funding.
9-9-407. Eligibility.
9-9-408. Subsidy agreement required — Commencement of subsidy.

9-9-404. Administration — Funding.

(a) The Department of Human Services shall establish and administer an ongoing program of subsidized adoption by persons who are determined by the department to be eligible to adopt under this subchapter.

(b) Subsidies and services for children under this program shall be provided out of funds appropriated to the department for the maintenance of children in foster care or made available to it from other sources.

History. Acts 1979, No. 1109, § 3; A.S.A. 1947, § 56-132; Acts 2005, No. 437, § 8; 2011, No. 607, § 5.

Amendments. The 2011 amendment deleted "and who are financially unable to otherwise adopt as determined by the department using a means-based test" at the end of (a).

9-9-407. Eligibility.

(a) A family is initially eligible for a subsidy for purposes of adoption if:

(1)(A) No other potential adoptive family has been identified and is willing and able to adopt the child without the use of a subsidy.

(B) In the case of a child who has established significant emotional ties with prospective adoptive parents while in their care as a foster child, the Department of Human Services may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy.

(C) In the case of a child who will be adopted by members of his or her biological family, the department may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy;

(2) The department has determined the family to be eligible;

(3) The child is in the custody of the department; and

(4) The child has been determined by the department to have special needs.

(b) A child who is a resident of Arkansas when eligibility for a subsidy is certified shall remain eligible and receive a subsidy, if necessary for adoption, regardless of the domicile or residence of the adopting parents at the time of application for adoption, placement, legal decree of adoption, or thereafter.

(c) A family is eligible for a legal subsidy for purposes of adoption if:

(1) The child is in the custody of the department; or

(2)(A) The child was in the custody of the department;

(B) Legal custody was transferred to a relative or other person; and

(C) The juvenile division case remains open pending the child obtaining permanency.

History. Acts 1979, No. 1109, § 4; 1981, No. 858, § 1; A.S.A. 1947, § 56-133; Acts 1999, No. 518, § 3; 2005, No. 437, § 9; 2011, No. 607, § 6.

Amendments. The 2011 amendment inserted "has been identified and" in (a)(1)(A); deleted "pursuant to a means-based test" at the end of (a)(2); and deleted (b) and redesignated the remaining subsections accordingly.

9-9-408. Subsidy agreement required — Commencement of subsidy.

(a) When parents are found and approved for adoption of a child certified as eligible for a subsidy and before the final decree of adoption is issued, there must be a written agreement between the family entering into the subsidized adoption and the Department of Human Services.

(b)(1) Adoption subsidies, the amount of which in individual cases shall be determined through agreement between the adoptive parents and the department but shall be no more than the current foster care board rate, may commence with the adoption placement or at the appropriate time after the adoption decree and may vary with the circumstances of the adopting parents and the needs of the child as well as the availability of other resources to meet the child's needs.

(2)(A) In the case of the special needs child whose eligibility is based on a high risk for development of a serious physical, mental, developmental, or emotional condition, the adoption subsidy agreement shall not provide for an adoption subsidy until the child actually develops the condition.

(B) A subsidy payment shall not be made until adequate documentation is submitted by the adoptive parents to the department showing that the child has now developed the condition.

(C) Upon acceptance by the department that the child has developed the condition, the adoption subsidy shall be retroactive to the date the adoptive parents submitted adequate documentation that the child developed the condition.

(c)(1) When a child is determined to have a causative preexisting condition which was not identified or known prior to the final decree of adoption and which has resulted in a severe medical or psychiatric condition that requires extensive treatment, hospitalization, or institutionalization, an adoption subsidy may be approved.

(2) Upon the approval of the subsidy, the adoptive parents shall also be entitled to receive retroactive subsidy payments for the two (2) months prior to the date such subsidy was approved.

(3) This subsection will apply only to adoptive placements made on or after April 28, 1979.

History. Acts 1979, No. 1109, § 5; 1985, No. 482, § 1; A.S.A. 1947, § 56-134; Acts 1993, No. 800, § 1; 2005, No. 437, § 9[10]; 2011, No. 607, § 7.

Amendments. The 2011 amendment deleted (b)(2) and redesignated (b)(3) as (b)(2).

Subchapter 5 — Voluntary Adoption Registry

SECTION.
9-9-504. Registry — Operation.

9-9-504. Registry — Operation.

(a)(1) The adult adoptee and each birth parent and each individual related within the second degree whose identity is to be disclosed may voluntarily place his or her name in the appropriate registry by submitting a notarized affidavit stating his or her name, address, and telephone number and his or her willingness to be identified solely to the other relevant persons who register.

(2) No registration shall be accepted until the prospective registrant submits satisfactory proof of his or her identity in accord with regulations specified in § 9-9-503.

(3) The failure to file a notarized affidavit with the registry for any reason, except death, shall preclude the disclosure of identifying information to those persons who do register.

(b)(1)(A) Upon registering, the registrant shall participate in not less than one (1) hour of counseling with a social worker employed by the entity that operates the registry. If a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry.

(B) If a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry.

(2) When an eligible person registers concerning an adoption that was arranged through an agency that has not merged or otherwise ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify, by certified mail within ten (10) business days after the date of registration, the agency that handled the adoption.

(c) In any case in which the identity of the birth father was unknown to the birth mother, or in which the administrator learns that one (1) or both birth parents are deceased, this information shall be shared with the adult adoptee. In those cases, the adoptee shall not be able to obtain identifying information through the registry, and he or she shall be told of his or her right to pursue whatever right otherwise exists by law to petition a court to release the identifying information.

(d) The following shall be matching and disclosure procedures:

(1) Each mutual consent voluntary adoption registry shall be operated under the direction of an administrator;

(2) The administrator shall be bound by the confidentiality requirements of this subchapter and shall be permitted reasonable access to the registry for the purposes set forth in this subchapter and for such purposes as may be necessary for the proper administration of the registry;

(3) A person eligible to register may request the administrator to disclose identifying information by filing an affidavit that sets forth the following:

(A) The current name and address of the affiant;

(B) Any previous name by which the affiant was known;

(C) The original and adopted names, if known, of the adopted child;

(D) The place and date of birth of the adopted child; and

(E)(i) The name and address of the adoption agency or other entity, organization, or person placing the adopted child, if known.

(ii) The affiant shall notify the registry of any change in name or location which occurs subsequent to his or her filing the affidavit.

(iii) The registry shall have no duty to search for the affiant who fails to register his or her most recent address;

(4)(A) The administrator of the mutual consent voluntary adoption registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents or individuals related within the second degree. The processing shall include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match.

(B) The processing shall include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match;

(5) The administrator shall determine that there is a match when the adult adoptee and a birth parent or individual related within the second degree have filed affidavits with the mutual consent voluntary adoption registry and have each received the counseling required in subsection (b) of this section; and

(6)(A) An agency receiving an assignment of a match under the provisions of this subchapter shall directly or by contract with a licensed adoption agency in this state notify all registrants through a direct and confidential contact.

(B) The contact shall be made by an employee or agent of the agency receiving the assignment.

(C) The employee or agent shall be a trained social worker who has expertise in postlegal adoption services.

(e)(1) Any affidavits filed and other information collected shall be retained for ninety-nine (99) years following the date of registration.

(2) Any qualified person may choose to remove his or her name from the registry at any time by filing a notarized affidavit with the registry.

(f)(1) A mutual consent voluntary adoption registry shall obtain only information necessary for identifying registrants.

(2) In no event shall the registry obtain information of any kind pertaining to the adoptive parents or any siblings to the adult adoptee who are children of the adoptive parents.

(g) All costs for establishing and maintaining a mutual consent voluntary adoption registry shall be obtained through users' fees charged to all persons who register.

(h) Beginning January 1, 2002, the Department of Human Services shall place the affidavit form for placement on the mutual adoption registry on the department's website.

History. Acts 1985, No. 957, § 7; A.S.A. 1947, § 56-144; Acts 1987, No. 1060, §§ 5, 6; 2001, No. 409, § 1; 2003, No. 650, § 6; 2011, No. 793, § 1.

Amendments. The 2011 amendment subdivided (d)(3)(E) as (d)(3)(E)(i) through (iii); and deleted former (d)(3)(E)(ii) and (iii).

CHAPTER 10

PATERNITY

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2013, No. 210, § 3: Mar. 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that pregnancy from rape against women occurs; that women who get pregnant as a result of rape and decide to carry their pregnancy to term should not have a lifetime tethered to their rapists due to custody issues; and that this act is immediately necessary to eliminate the possibility that a rapist convicted in a court of law can have custody rights to any child conceived and born from such a rape. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

9-10-104. Suit to determine paternity of child born outside of marriage.

CASE NOTES

Defenses.

Adult child's complaint against her alleged father's estate to establish paternity under this section was barred by res judicata based on her mother's bastardy action brought under former § 34-702 in 1980, although the child did not seek child support, and the prior action was dismissed for the mother's failure to appear at a hearing. Mathis v. Estate of McSpadden, 2012 Ark. App. 599, — S.W.3d —, 2012 Ark. App. LEXIS 706 (Oct. 24, 2012).

9-10-108. Paternity test.

CASE NOTES

Paternity of Deceased Child.

Father's petition to establish paternity to a deceased child through DNA testing pursuant to this section was properly dismissed under Ark. R. Civ. P. 12(b)(1) and (6) as there was no provision in the statute for establishing paternity when it was the child who was deceased. Scoggins v. Medlock, 2011 Ark. 194, 381 S.W.3d 781 (2011).

9-10-113. Custody of child born outside of marriage.

CASE NOTES

Analysis

Change in Circumstances.
Custody to Father.
Miscellaneous.

Change in Circumstances.

In a petition for protection, paternity, and custody, a father, before being awarded custody of his minor daughter, was not required to show a material change of circumstances under this section because no order had been entered regarding custody until the father filed his petition. Donato v. Walker, 2010 Ark. App. 566, 377 S.W.3d 437 (2010).

Trial court erred in requiring a biological father to prove a material change of circumstances in order to obtain custody of his two children because it was an initial custody determination with the paternity action, not a change of custody action. Lane v. Blevins, 2013 Ark. App. 270, — S.W.3d — (2013).

Custody to Father.

In a petition for protection, paternity, and custody, the trial court properly awarded custody of the parties' minor daughter to the father because the evidence showed that the mother's temper scared her daughter, that the mother attempted to commit suicide, and that the father was an exceptional parent. Donato v. Walker, 2010 Ark. App. 566, 377 S.W.3d 437 (2010).

Miscellaneous.

In a case in which a mother appealed a circuit court's order granting custody of her daughter born out of wedlock to the father, the parties made a full record in what was essentially a swearing match about who would be the better custodial parent, and the circuit court was in the best position to judge the witnesses' credibility, and the appellate court deferred to its decision. The circuit court's rulings banning alcohol, drugs, and cohabitation by unwed or non-blood relatives adequately addressed any other issues about the father's custody being in his daughter's best interest. Medina v. Roberts, 2010 Ark. App. 165, — S.W.3d — (2010).

9-10-115. Modification of orders or judgments.

CASE NOTES

Analysis

Paternity Testing.
Retroactive Modification.

Paternity Testing.

Where a default judgment was entered in paternity proceedings and the adjudicated father's support obligation was established in 1995, where the Office of Child Support Enforcement (OCSE) instituted proceedings in 2005 to recover support arrearages, and where the adjudicated father requested a paternity test, the circuit court erred in granting the father's motion because the father's motion was untimely in that subdivision (e)(1)(A) of this section allowed an adjudi-

cated father one paternity test during any time period in which he was required to pay child support and the father's child support obligation terminated under § 9-14-237 when the child reached the age of majority. State v. Perry, 2012 Ark. 106, — S.W.3d — (2012).

Subdivision (e)(1)(A) of this section provides that an adjudicated father is entitled to one paternity test at any time during the period of time that he is required to pay child support, and the period of time in which a non-custodial parent is obligated to pay child support automatically terminates upon the child's 18th birthday pursuant to § 9-14-237(a)(1)(A)(i). Thus, the period that a father is required to pay child support ends when the child turns 18; likewise, the period of time in which the father can seek a paternity test also ends when the child turns 18. State v. Perry, 2012 Ark. 106, — S.W.3d — (2012).

Retroactive Modification.

Order that an alleged father was not obligated to pay the unpaid balance of his support obligation from the date of the order forward pursuant to subdivision (f)(1)(C) of this section was affirmed because the circuit court correctly applied the amended version of this section and found that the alleged father's obligation had to be vacated. State v. Jones, 2009 Ark. 620, — S.W.3d — (2009).

9-10-121. Termination of certain parental rights for putative fathers convicted of rape.

(a) All rights of a putative father to custody, visitation, or other contact with a child conceived as a result of a rape shall be terminated immediately upon conviction of the rape in which the child was conceived under § 5-14-103.

(b) The biological mother of a child conceived as a result of rape may petition the court under § 9-10-104 to reinstate the parental rights of a putative father terminated under subsection (a) of this section.

(c) A putative father to a child conceived as a result of rape shall pay child support as provided under § 9-10-109.

(d) A child conceived as a result of rape is entitled to:

(1) Child support under § 9-10-109; and

(2) Inheritance under § 28-9-201 et seq.

History. Acts 2013, No. 210, § 1.

CHAPTER 11

MARRIAGE

SUBCHAPTER.

2. License and Ceremony.
5. Rights and Property of Married Persons.
8. Covenant Marriage Act.

Subchapter 2 — License and Ceremony

SECTION.

9-11-208. License not issued to persons of the same sex.

9-11-208. License not issued to persons of the same sex.

(a)(1)(A) It is the public policy of the State of Arkansas to recognize the marital union only of man and woman.

(B) A license shall not be issued to a person to marry another person of the same sex, and no same-sex marriage shall be recognized as entitled to the benefits of marriage.

(2) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by a person of the same sex, when a marriage license is issued by another state or by a foreign jurisdiction, shall be void in Arkansas, and any contractual or other rights granted by virtue of that license, including its termination, shall be unenforceable in the Arkansas courts.

(3) However, nothing in this section shall prevent an employer from extending benefits to a person who is a domestic partner of an employee.

(b) A license shall not be issued to a person to marry unless and until the female shall attain the age of sixteen (16) years and the male the age of seventeen (17) years and then only by written consent by a parent or guardian until the male shall have attained the age of eighteen (18) years and the female the age of eighteen (18) years.

History. Acts 1941, No. 404, § 2; A.S.A. 1947, § 55-211; Acts 1997, No. 146, §§ 1, 2; 2007, No. 441, § 3; 2008 (1st Ex. Sess.), No. 3, § 3; 2011, No. 793, § 2.

Amendments. The 2011 amendment redesignated the subsections of the section; and substituted "a person" for "persons" throughout the section.

Subchapter 4 — Arkansas Premarital Agreement Act

9-11-406. Enforcement.

CASE NOTES

Legal Malpractice.

When the client sued the attorney in connection with the execution of a prenuptial agreement, her complaint was barred by the three-year statute of limitations for legal-malpractice claims under § 16-56-105; there was no written contract to bring the action under the five-year statute of limitations set forth in § 16-56-111. While the prenuptial agreement contained a certification that the document was not enforceable under this section if the party did not voluntarily and expressly waive further disclosures after consulting with legal counsel, this writing did not convey written obligations upon the attorney. Pounders v. Reif, 2009 Ark. 581, — S.W.3d — (2009).

Subchapter 5 — Rights and Property of Married Persons

9-11-502. [Repealed.]

Publisher's Notes. This section concerning removal of disabilities of married women was repealed by Acts 2013, No. 1152, § 5. The section was derived from Acts 1915, No. 159, § 1; 1919, No. 66, § 1; C. & M. Dig., § 5577; Pope's Dig., § 7227; A.S.A. 1947, § 55-401.

9-11-504. [Repealed.]

Publisher's Notes. This section concerning authority to make executory contracts — power of attorney was repealed by Acts 2013, No. 1152, § 6. The section was derived from Acts 1895, No. 47, § 1, p. 58; Pope's Dig., § 7226; A.S.A. 1947, § 55-405.

9-11-515. [Repealed.]

Publisher's Notes. This section concerning reformation of deeds was repealed by Acts 2013, No. 1152, § 7. The section was derived from Acts 1893, No. 21, § 2, p. 38; C. & M. Dig., § 5578; Pope's Dig., § 7228; A.S.A. 1947, § 55-403.

9-11-516. Doctrine of necessaries — Abolished.

(a)(1) Absent express authority, neither a husband nor a wife is liable for the other's debt obligations, including those for necessaries.

(2) As used in this section, "necessaries" means all such things required for the sustenance of a person, including food, clothing, medicine, and habitation.

(b) The doctrine of necessaries, as it is known in the common law, is hereby abolished.

History. Acts 2011, No. 1183, § 1.

Subchapter 8 — Covenant Marriage Act

SECTION.

9-11-804. Content of declaration of intent.

(a) A declaration of intent to contract a covenant marriage shall contain all of the following:

(1) A recitation signed by both parties to the following effect:

"A COVENANT MARRIAGE

We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received authorized counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act of 2001, and we understand

that a covenant marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Arkansas law on covenant marriages, and we promise to love, honor, and care for one another as husband and wife for the rest of our lives.";

(2) An affidavit by the parties that they have received authorized counseling that shall include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce;

(3) An attestation, signed by the counselor and attached to or included in the parties' affidavit, confirming that the parties received authorized counseling as to the nature and purpose of the marriage and the grounds for termination of the marriage and an acknowledgment that the counselor provided to the parties the informational pamphlet developed and promulgated by the Administrative Office of the Courts under this subchapter that provides a full explanation of the terms and conditions of a covenant marriage; and

(4)(A) The signature of both parties witnessed by a notary; and

(B) If one (1) of the parties is a minor, or both are minors, the written consent or authorization of those persons required under this chapter to consent to or authorize the marriage of minors.

(b) The declaration shall consist of two (2) separate documents:

(1) The recitation as set out in subdivision (a)(1) of this section; and

(2) The affidavit with the attestation either included within or attached to the document.

(c) The recitation, affidavit, and attestation shall be filed as provided in § 9-11-803(b).

History. Acts 2001, No. 1486, § 5; Acts 2011, No. 793, § 3.

Amendments. The 2011 amendment redesignated the subdivisions of (a)(2) and (3) as (a)(2) through (4).

CHAPTER 12

DIVORCE AND ANNULMENT

SUBCHAPTER.

3. Actions for Divorce or Alimony.

Subchapter 2 — Annulment

9-12-201. Grounds.

CASE NOTES

Abatement on Death of Party.

Administrator of a husband's estate lacked standing to appeal the denial of his motion to be substituted as a party for the husband in the wife's annulment action because he was not a party below. Additionally, pursuant to this section, providing for annulment during the lives of the parties, the annulment action abated on the death of the husband. Stuhr v. Oliver, 2010 Ark. 189, 363 S.W.3d 316 (2010).

Subchapter 3 — Actions for Divorce or Alimony

9-12-301. Grounds for divorce.

CASE NOTES

Indignities.

Trial court erred in granting a divorce to a wife on grounds of general indignities under subdivision (b)(3)(C) of this section because the wife's basis for seeking a divorce on that ground was the husband's affair with another woman, and adultery was a separate ground for divorce under subdivision (b)(4), but the wife never pled the ground of adultery; even if an adulterous affair could fall under the category of general indignities, the wife offered no corroboration of the affair. Coker v. Coker, 2011 Ark. App. 752, — S.W.3d — (2011).

Circuit court did not err by awarding the wife a divorce based on the ground of indignities under subdivision (b)(3)(C) of this section, because the wife offered evidence of her husband's ongoing affair, rudeness, unmerited reproach, and studied neglect that amounted to "settled hate" rendering her condition in life intolerable. Coker v. Coker, 2012 Ark. 383, — S.W.3d — (2012).

9-12-306. Corroboration.

CASE NOTES

Analysis

Contested Cases.
Residence.

Contested Cases.

Circuit court did not err by awarding the wife a divorce based on the ground of indignities under § 9-12-301(b)(3)(C), because the wife offered evidence of her husband's ongoing affair, rudeness, unmerited reproach, and studied neglect that amounted to "settled hate" rendering her condition in life intolerable. Evidence of his indignities was corroborated under this section by her mother who indicated that her husband was rude, inattentive, and did not care about her; additionally, his misuse of marital funds, purchase of diamonds, and hotel bills provided some inference that he was engaged in studied neglect, open insult, and alienation and estrangement. Coker v. Coker, 2012 Ark. 383, — S.W.3d — (2012).

Residence.

At the hearing on a divorce complaint filed in 2005, a witness testified that the wife had continuously resided in Pulaski County, Arkansas, from 1999 to 2006 for purposes of the residency requirement of § 9-12-307(a)(1)(A); because the wife pro-

vided corroborated proof under subdivision (c)(1) of this section, the circuit court had jurisdiction to enter the divorce decree. Roberts v. Roberts, 2009 Ark. 567, 349 S.W.3d 886 (2009).

9-12-307. Matters that must be proved.

CASE NOTES

Analysis

Construction.
Residence.

Construction.

As used in subdivision (a)(1)(A) of this section, "before" is defined as preceding; while "next" is defined as adjoining in a series: immediately preceding or following in order. With these definitions in mind and applying them to the instant legislation, it is clear that the general assembly intended that a divorce plaintiff must prove residence in the state by either the plaintiff or defendant for sixty days immediately preceding, or next before, the filing of a complaint for divorce and, in addition, residence in the state for three full months preceding, or before, the entry of the divorce decree. Roberts v. Roberts, 2009 Ark. 567, 349 S.W.3d 886 (2009).

Residence.

At the hearing on a divorce complaint filed in 2005, a witness testified that the wife had continuously resided in Pulaski County, Arkansas, from 1999 to 2006; because the wife provided sufficient proof of the residency requirement of subdivision (a)(1)(A) of this section, the circuit court had jurisdiction to enter the divorce decree. Roberts v. Roberts, 2009 Ark. 567, 349 S.W.3d 886 (2009).

9-12-309. Maintenance and attorney's fees — Interest.

CASE NOTES

Analysis

Attorney's Fees.
Showing of Merit.

Attorney's Fees.

In a divorce and custody matter, the trial court did not abuse its discretion in its award of attorney's fees to the mother where the father earned over twice as much as the mother earned. Poole v. Poole, 2009 Ark. App. 860, 372 S.W.3d 420 (2009).

On appeal from a divorce decree, considering the disparity in the parties' income, there was no abuse of discretion in the trial court's award of $2,000 in attorney fees to the wife under subdivision (a)(2) of this section. Page v. Page, 2010 Ark. App. 188, 373 S.W.3d 408 (2010).

Trial court did not abuse its discretion in awarding a wife a partial attorney's fee of $12,000 given that the husband had paid his attorneys mainly in cash from the account of the marital business, that the award to the wife was less than half the amount that the husband expended from the marital-business account, and that there was income disparity and earning power between the husband and wife. Wright v. Wright, 2010 Ark. App. 250, 377 S.W.3d 369 (2010).

In dissolution proceedings, a trial court did not abuse its discretion in not awarding attorney's fees and costs to a wife, pursuant to subdivision (a)(2) of this section, because even though the husband had considerably more assets than the wife, she also had considerable assets; the wife's net worth at the time of the divorce was $600,050, and the wife received $500,000 in marital property and $155,000 in alimony for five years. Barnes v. Barnes, 2010 Ark. App. 822, 378 S.W.3d 766 (2010).

Circuit court did not abuse its discretion by awarding attorney's fees to a mother, pursuant to subsection (b) of this section, for having to respond to a father's motions for reconsideration regarding modification of child support obligations because of the economic disparity between the parties and the father's former counsel was familiar the arguments and issues presented to

the circuit court while new counsel was not; the father changed attorneys after the matter was tried but before the order was entered. McDougal v. McDougal, 2011 Ark. App. 13, 378 S.W.3d 813 (2011).

Where the wife was granted a divorce based on indignities, the circuit court abused its discretion by awarding her $11,376.12 in attorney's fees under this section because she did not file an affidavit for attorney's fees, she failed to mention the requested expenses in the decree, and the amount awarded was in excess of the amount sought. Coker v. Coker, 2012 Ark. 383, — S.W.3d — (2012).

Showing of Merit.

Trial court did not err under subdivision (a)(2) of this section in awarding attorney fees to a wife in a divorce action because the husband stood in a greater financial position than the wife. Delgado v. Delgado, 2012 Ark. App. 100, — S.W.3d — (2012).

Cited: Valentine v. Valentine, 2010 Ark. App. 259, 377 S.W.3d 387 (2010).

9-12-312. Alimony — Child support — Bond — Method of payment.

(a)(1) When a decree is entered, the court shall make an order concerning the care of the children, if there are any, and an order concerning alimony, if applicable, as are reasonable from the circumstances of the parties and the nature of the case.

(2) Unless otherwise ordered by the court or agreed to by the parties, the liability for alimony shall automatically cease upon the earlier of:

(A) The date of the remarriage of the person who was awarded the alimony;

(B) The establishment of a relationship that produces a child or children and results in a court order directing another person to pay support to the recipient of alimony, which circumstances shall be considered the equivalent of remarriage;

(C) The establishment of a relationship that produces a child or children and results in a court order directing the recipient of alimony to provide support of another person who is not a descendant by birth or adoption of the payor of the alimony, which circumstances shall be considered the equivalent of remarriage;

(D) The living full time with another person in an intimate, cohabitating relationship;

(E) The death of either party; or

(F) Any other contingencies as set forth in the order awarding alimony.

(3)(A) In determining a reasonable amount of child support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart.

(B) It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.

(C) Only upon a written finding or specific finding on the record that the application of the child support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

(4)(A) The family support chart shall be revised at least once every four (4) years by a committee to be appointed by the Chief Justice of

the Supreme Court to ensure that the support amounts are appropriate for child support awards.

(B) The committee shall also establish the criteria for deviation from use of the chart amount.

(5) The Supreme Court shall approve the family support chart and criteria upon revision by the committee for use in this state and shall publish it through per curiam order of the court.

(6)(A) The court may provide for the payment of child support beyond the eighteenth birthday of the child to address the educational needs of a child whose eighteenth birthday falls before graduation from high school so long as such child support is conditional on the child remaining in school.

(B) The court also may provide for the continuation of support for an individual with a disability that affects the ability of the individual to live independently from the custodial parent.

(7) Both a person paying alimony and a person receiving alimony are entitled to petition the court for a review, modification, or both of the court's alimony order at any time based upon a significant and material change of circumstances.

(b)(1) Alimony may be awarded under proper circumstances concerning rehabilitation to either party in fixed installments for a specified period of time so that the payments qualify as periodic payments within the meaning of the Internal Revenue Code.

(2) When a request for rehabilitative alimony is made to the court, the payor may request or the court may require the recipient to provide a plan of rehabilitation for the court to consider in determining:

(A) Whether or not the plan is feasible; and

(B) The amount and duration of the award.

(3) If the recipient fails to meet the requirements of the rehabilitative plan, the payor may petition the court for a review to determine if rehabilitative alimony shall continue or be modified.

(4) A person paying alimony is entitled to petition the court for a review, modification, or both of the court's alimony order at any time based upon a significant and material change of circumstances.

(c)(1) When the order provides for payment of money for the support and care of any children, the court, in its discretion, may require the person ordered to make the payments to furnish and file with the clerk of the court a bond or post security or give some other guarantee such as life insurance in an amount and with such sureties as the court shall direct.

(2) The bond, security, or guarantee is to be conditioned on compliance with that part of the order of the court concerning the support and care of the children.

(3) If action is taken due to a delinquency under the order, proper advance notice to the noncustodial parent shall be given.

(d)(1) All orders requiring payments of money for the support and care of any children shall direct the payments to be made through the registry of the court unless the court in its discretion determines that it would be in the best interest of the parties to direct otherwise.

(2) However, in all cases brought under Title IV-D of the Social Security Act, the court shall order that all payments be made through the Arkansas child support clearinghouse in accordance with § 9-14-801 et seq.

(e)(1)(A) Except as set forth in subdivision (e)(5) of this section, all orders directing payments through the registry of the court or through the Arkansas child support clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars ($36.00) per year.

(B) The fee shall be collected from the noncustodial parent or obligated spouse at the time of the first support payment and during the anniversary month of the entry of the order each year thereafter, or nine dollars ($9.00) per quarter at the option of the obligated parent, until no children remain minor and the support obligation is extinguished and any arrears are completely liquidated.

(2) The clerk, upon direction from the court and as an alternative to collecting the annual fee during the anniversary month each year after entry of the order, may prorate the first fee collected at the time of the first payment of support under the order to the number of months remaining in the calendar year and thereafter collect all fees as provided in this subsection during the month of January of each year.

(3)(A) Payments made for this fee shall be made annually in the form of a check or money order payable to the clerk of the court or other legal tender that the clerk may accept.

(B) This fee payment shall be separate and apart from the support payment, and under no circumstances shall the support payment be reduced to fulfill the payment of this fee.

(4) Upon the nonpayment of the annual fee by the noncustodial parent within ninety (90) days, the clerk may notify the payor under the order of income withholding for child support who shall withhold the fee in addition to any support and remit it to the clerk.

(5) In counties where an annual fee is collected and the court grants at least two thousand five hundred (2,500) divorces each year, the court may require that the initial annual fee be paid by the noncustodial parent or obligated spouse before the filing of the order.

(6)(A) All moneys collected by the clerk as a fee as provided in this subsection shall be used by the clerk's office to offset administrative costs as a result of this subchapter.

(B) At least twenty percent (20%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated data system for use in administering the requirements of this subchapter.

(C) The acquisition and update of software for the automated data system shall be a permitted use of these funds.

(D) All fees collected under this subsection shall be paid into the county treasury to the credit of the fund to be known as the "support collection costs fund".

(E) Moneys deposited into this fund shall be appropriated and expended for the uses designated in this subdivision (e)(6) by the quorum court at the direction of the clerk of the court.

(f)(1) The clerk of the court shall maintain accurate records of all child support orders and payments made under this section and shall post to individual child support account ledgers maintained in the clerk's office all payments received directly by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and reported to the clerk by the office.

(2) The office shall provide the clerk with sufficient information to identify the custodial and noncustodial parents, a docket number, and the amount and date of payment.

(3) The clerk shall keep on file information provided by the office for audit purposes.

(g) The clerk may accept the support payment in any form of cash or commercial paper, including personal check, and may require that the custodial parent or nonobligated spouse be named as payee thereon.

History. Rev. Stat., ch. 51, § 9; C. & M. Dig., § 3508; Pope's Dig., § 4390; Acts 1951, No. 56, § 1; 1979, No. 705, § 3; 1981, No. 657, § 1; 1985, No. 989, § 1; 1986 (2nd Ex. Sess.), No. 12, § 1; A.S.A. 1947, § 34-1211; Acts 1987, No. 599, § 1; 1989, No. 100, § 1; 1989, No. 948, § 2; 1989 (3rd Ex. Sess.), No. 54, § 2; 1991, No. 1008, § 2; 1991, No. 1098, § 2; 1991, No. 1102, § 2; 1993, No. 1242, §§ 5, 9; 1995, No. 1184, § 5; 1995, No. 1353, § 1; 1997, No. 208, § 7; 1997, No. 1273, § 1; 1997, No. 1296, § 10; 1999, No. 1514, § 3; 2013, No. 1487, § 1.

Amendments. The 2013 amendment rewrote the section.

CASE NOTES

Analysis

In General.
Alimony.
Child Support.
Compliance.
Earning Capacity.
Written Findings.

In General.

Trial court had the authority to require the husband to maintain life insurance for the benefit of the wife and children. Rudder v. Hurst, 2009 Ark. App. 577, 337 S.W.3d 565 (2009).

Alimony.

When the original divorce decree was entered, the circuit court judge failed to address the issue of alimony; two years later upon the wife's motion for reconsideration, the circuit judge had subject-matter jurisdiction under this section to enter a supplemental divorce decree awarding alimony. Edwards v. Edwards, 2009 Ark. 580, 357 S.W.3d 445 (2009).

Nothing in subdivision (a)(1) of this section or applicable case law requires a spouse to attempt to obtain public housing before a trial court may award alimony. Stuart v. Stuart, 2012 Ark. App. 458, — S.W.3d — (2012).

In a divorce decree, the trial court did not abuse its discretion in awarding $642 per month to the wife in permanent alimony under subdivision (a)(1) of this section. The trial court considered the appropriate factors and observed that while the husband's income was $2440 per month, the wife's income was $440 per month; the court also noted that the wife did not work outside the home during the nineteen-year marriage. Stuart v. Stuart, 2012 Ark. App. 458, — S.W.3d — (2012).

Child Support.

Where the father was awarded child custody and the mother was ordered to pay child support based on the child-support chart rate set forth in Ark. Sup. Ct. Admin. Order No. 10, she was not entitled to a reduction in child support based on allegations that she could not make ends meet while the father was placing some of the child support funds into his savings account. The mother did not show a change of circumstances, nor did she rebut the presumption that the amount of

child support awarded under the family-support chart was reasonable in accordance with subdivision (a)(2) of this section. Hubanks v. Baughman, 2009 Ark. App. 585, — S.W.3d — (2009).

Trial court did not abuse its discretion in deviating from the child support chart provided by Administrative Order of the Supreme Court Number 10 and by disallowing a mother's request for a $3,000 allowance per month so that she could work part-time or not at all because considering the child support chart, evidence, testimony, and exhibits, the trial court determined that the increase to $10,317 per month was reasonable and allowed both homes to provide for the children in like manner; the trial court found that the presumptive amount of monthly support provided by the family support chart was rebutted based on credible evidence, the testimony, the exhibits, and the needs of the children. Gilbow v. Travis, 2010 Ark. 9, 372 S.W.3d 319 (2010).

Trial court did not err in denying a mother's motion to increase a father's child-support obligation because all of the children's needs were being met from the father's support payments, with over $3,000 left over each month, and the mother's approximate $46,000 annual income from her part-time jobs did not even factor into the children's expenses; the father was not the only parent required to support the children because in accordance with Administrative Order of the Supreme Court No. 10, the mother's income was also a relevant factor to consider in awarding child support. Kemp v. Kemp, 2011 Ark. App. 354, 384 S.W.3d 56 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 489 (Ark. Ct. App. June 22, 2011).

It was error for the court to calculate the husband's income based on his tax returns after determining that the tax returns were not credible, because the court found that the husband was earning more than his reported $40,000 salary and questioned him regarding his underemployment. John v. Bolinder, 2013 Ark. App. 224, — S.W.3d — (2013).

In a child support modification case, a trial court did not err by relying on a father's tax record in determining his monthly income when it determined that there was a material change of circumstances to support the modification under §9-14-107(a)(1); there was no need to consider the net-worth approach. Cowell v. Long, 2013 Ark. App. 311, — S.W.3d — (2013).

Compliance.

Trial court was permitted to modify a divorce decree beyond the expiration of ninety days because Ark. R. Civ. P. 60 was not applicable as the second order merely corrected an oversight in the divorce decree and clarified: (1) the date alimony previously awarded under subdivision (a)(1) of this section would begin; (2) that the Social Security Administration would withhold the payments from the husband's social security disability payments; and (3) that alimony payments would continue until remarriage or an appellate ruling. Stuart v. Stuart, 2012 Ark. App. 458, — S.W.3d — (2012).

Earning Capacity.

Trial court erred in determining a husband's income for child support and alimony purposes under subdivision (a)(2) of this section and Administrative Order No. 10 by failing to account for depreciation in the husband's business and using only one year of tax returns. Wright v. Wright, 2010 Ark. App. 250, 377 S.W.3d 369 (2010).

Written Findings.

Circuit court erred in ordering a father to pay child support and child support arrearage because the circuit court's order did not contain a determination of the father's income, did not refer to the guidelines pursuant to subdivision (a)(2) of this section or the support amount required thereunder, and did not recite whether it deviated from the family-support chart as required under Administrative Order of the Supreme Court No. 10, § I; under § I, the circuit court's order shall (1) contain the circuit court's determination of the payor's income, (2) recite the amount of support required under the guidelines, and (3) recite whether the circuit court deviated from the family support chart. Bradford v. Johnson, 2010 Ark. App. 492, — S.W.3d — (2010).

Cited: In re Admin. Order No. 10: Ark. Child Support Guidelines, 347 Ark. 1064 (2002).

9-12-313. Enforcement of separation agreements and decrees of court.

CASE NOTES

Analysis

Agreements Between Parties.
Jurisdiction.

Agreements Between Parties.

In a divorce case, the court erred by ordering the husband to pay a lump sum in monthly installments because it resulted in an impermissible modification of the parties' property settlement agreement; the fact that the husband entered into an agreement that later appeared improvident was no ground for relief. Tiner v. Tiner, 2012 Ark. App. 483, — S.W.3d — (2012).

Jurisdiction.

Pursuant to parties' property-settlement agreement, which was incorporated into their divorce decree, as the husband agreed to retire the debts of the parties' businesses, a court had authority to simply enforce its own decree along with the performance of the written agreement pursuant to this section. French v. French, 2011 Ark. App. 612, — S.W.3d — (2011).

9-12-314. Modification of allowance for alimony and maintenance — Child support.

RESEARCH REFERENCES

ALR. Retirement of Husband as Change of Circumstances Warranting Modification of Divorce Decree — Early Retirement. 36 A.L.R.6th 1.

CASE NOTES

Analysis

Calculation.
Failure to Modify.

Calculation.

Trial court erred when it failed to include a prior judgment entered in favor of a mother in a child support case, pursuant to this section and § 9-14-234, when it was calculating a father's arrearage; a remand was necessary to determine whether the judgment was applied to the arrearage. If the amount was not applied, the arrearage amount had to be amended to reflect an inclusion of the judgment amount. Office of Child Support Enforcement v. Harper, 2013 Ark. App. 171, — S.W.3d — (2013).

Failure to Modify.

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under § 9-14-233 and to attorney fees was barred by res judicata, and res judicata also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under this section and 9-14-234. Williams v. Nesbitt, 2012 Ark. App. 408, — S.W.3d — (2012).

9-12-315. Division of property.

RESEARCH REFERENCES

ALR. Inherited Property as Marital or Separate Property in Divorce Action. 38 A.L.R.6th 313.

Divorce and Separation: Appreciation in Value of Separate Property During Marriage with Contribution by Either Spouse

as Separate or Community Property (Doctrine of "Active Appreciation"). 39 A.L.R.6th 205.

CASE NOTES

Analysis

Construction.
Adequacy of Division.
Contribution of Parties.
Debts.
Divorce.
Marital Property.
Standard of Review.
Timing.
Unequal Division.

Construction.

Court did not abuse its discretion in refusing to reopen the record or in denying the motion for new trial, because while subdivision (a)(1) of this section required that property be valued at the time of the divorce, it did not require the trial court to reopen the record or set aside a decree and hold an additional hearing for the purpose of receiving the most up-to-date evidence. Dew v. Dew, 2012 Ark. App. 122, 390 S.W.3d 764 (2012).

Adequacy of Division.

After granting a husband a divorce on the ground of general indignities, a trial court did not err under subdivision (a)(1)(A) of this section in its award of rehabilitative alimony to the wife; the trial court looked at the husband's four-year income picture and considered the wife's alleged physical limitations due to a prior car accident, but noted that she had worked as a substitute teacher long after the accident and that she made approximately $50 per day doing so. Hickman v. Hickman, 2010 Ark. App. 704, — S.W.3d — (2010).

Trial court did not clearly err in failing to make an unequal division of the equity in the divorcing parties' house due to a home equity loan that was received almost a year before the parties separated pursuant to this section, as the wife provided testimony that the money had already been spent and that she used it for extra nursing school expenses, her own medical expenses, and various living expenses. Grantham v. Lucas, 2011 Ark. App. 491, 385 S.W.3d 337 (2011), review denied, — S.W.3d —, 2012 Ark. LEXIS 27 (Ark. Jan. 19, 2012).

Contribution of Parties.

In a divorce decree, the trial court did not err under subdivision (a)(1)(B) of this section in awarding the wife a 40 percent interest in the value of improvements to a house that was built during the marriage on the husband's lot because she testified that she helped work on the house and that she paid for materials; the parties lived in her nonmarital residence while the house was under construction. Johnson v. Johnson, 2011 Ark. App. 276, — S.W.3d — (2011).

Debts.

Trial court erred in finding that a wife owed a husband for expenditures he made to the wife's duplex, which was nonmarital property, because the amount the wife allegedly owed the husband included a sum for a bedroom suite and mortgage payments made to the wife's mortgagee, and those expenditures were not attributable to real property. Wise v. Wise, 2010 Ark. App. 12, 371 S.W.3d 718 (2010).

In a divorce and property distribution action, the trial court did not err in refusing to give a husband credit for payments he claimed to have made on marital debts during the divorce proceedings to preserve the marital estate as the trial court's allocation of the marital debt was supported by the husband's admission that the only marital debt he paid was the mortgage on property that the parties owned in Alabama. Friend v. Friend, 2010 Ark. App. 525, 376 S.W.3d 519 (2010).

Trial court did not err in finding that 85 percent of a wife's student loan was a marital debt because it was used to pay household debts when the parties' income was insufficient to support them, nor in finding that the husband should pay 40 percent of that debt and the wife 60 percent, using the factors set out in subdivision (a)(1)(A) of this section. Easley v. Easley, 2010 Ark. App. 73, — S.W.3d — (Jan. 27, 2010).

Divorce.

Trial court did not err in finding that a 60-acre tract that had been conveyed to a husband by his mother, while originally nonmarital property, had lost its status as nonmarital property because of the substantial improvements made to the property with marital funds and the wife's nonmarital funds and in equitably dividing the tract. Coatney v. Coatney, 2010 Ark. App. 262, — S.W.3d — (2010).

Marital Property.

Trial court's finding that a husband and wife intended to create a tenancy by the entirety when property was purchased was not clearly erroneous because the husband used his non-marital funds to purchase the property and to build a home, but the warranty deed conveyed title to both parties as husband and wife; in finding that the husband made a gift to the wife of the property and funds used to construct the home, the trial court expressly rejected the husband's claim that the parties intended the land and home to remain his separate property. McCracken v. McCracken, 2009 Ark. App. 758, 358 S.W.3d 474 (2009).

Trial court's valuation for property distribution purposes of a marital home, which was built during the parties' marriage upon the wife's non-marital land, was not clearly erroneous where there was no evidence of the before-and-after value of the property to show the existence and extent of any increase in the value of non-marital property. Poole v. Poole, 2009 Ark. App. 860, 372 S.W.3d 420 (2009).

There was no clear error in the trial court's determination that the property of a husband and wife had already passed out of the marital estate and had been gifted to their sons because two sons had moved onto the property, and at least one son had paid for the improvements on the property; the trial court had authority to decide the parties' rights to the three six-acre parcels, which were determined to be out of the marital estate as the result of gifting the property to the sons several years earlier. Wise v. Wise, 2010 Ark. App. 12, 371 S.W.3d 718 (2010).

Trial court had no authority to order a husband and wife to deed property to their sons without making them parties to the divorce action because the sons were not parties to the action. Wise v. Wise, 2010 Ark. App. 12, 371 S.W.3d 718 (2010).

Trial court did not err in ruling that a husband's vested stock options were marital property subject to division between the husband and his wife because its application of a North Carolina case, which held that stock options that were not exercisable as of the date of separation and that could be lost as a result of an event occurring thereafter were not vested and had to be treated as the separate property of the spouse for whom they could vest at some time in the future was not clearly erroneous; however, the wife was not entitled to half of the proceeds from the sale of the options subsequent to the dissolution of the marriage because she was entitled to half of what the trial court determined to be "vested" or "marital" property but only as to that percentage determined to be marital as described by the trial court's order. Pianalto v. Pianalto, 2010 Ark. App. 80, 374 S.W.3d 67 (2010).

Circuit court complied with this section when it stated the factors it considered in concluding that the division of the parties' personal property was equitable where (1) there was scant evidence in the record as to the value of the personal property; and (2) the circuit court was not required in every case to mechanically divide the marital property in kind. Gilliam v. Gilliam, 2010 Ark. App. 137, 374 S.W.3d 108 (2010).

Trial court erred in a divorce action in finding that a wife's stock interest in a family company was nonmarital property because the stock was marital property under subsection (b) of this section; the wife received the stock during the marriage. The stock was not acquired in exchange for nonmarital property or income; instead, it was exchanged for a note receivable. Kelly v. Kelly, 2011 Ark. 259, — S.W.3d — (2011).

Trial court erred in finding that a hunting club membership was nonmarital property as: (1) the husband's self-serving testimony did not rebut the presumption under this section that the property was marital property; (2) the property was purchased two years after the parties were married, and marital funds were used to pay the annual fees; and (3) the origination of the funds used for the purchase was not evidenced by the fact that

the partnership document named the husband as a limited partner, or by a check from the husband's mother dated well after the purchase. Carroll v. Carroll, 2011 Ark. App. 356, 384 S.W.3d 50 (2011), appeal dismissed, 2013 Ark. App. 286, — S.W.3d —, 2013 Ark. App. LEXIS 298 (2013).

Division of property and debt after a divorce was affirmed because the circuit court complied with this section when it discussed the factors that went into its decision to make an unequal division of the marital property; by awarding the wife 58% of the retirement and bank accounts instead of a specific sum, the circuit court was taking into consideration any fluctuations in the market. Horton v. Horton, 2011 Ark. App. 361, 384 S.W.3d 61 (2011).

While a husband was assessed the bulk of the parties' marital debt, pursuant to subdivision (a)(1) of this section, reversal was necessary as his continued receipt of his entire military retirement benefits would result in a substantial windfall to him. Bellamy v. Bellamy, 2011 Ark. App. 433, — S.W.3d — (2011).

In this divorce action, the order finding that the parties' home was marital property was affirmed because while the wife might have intended to maintain the status of her separate property, she did not; the deed to the house was to the parties jointly, as husband and wife. McClure v. Schollmier-McClure, 2011 Ark. App. 681, — S.W.3d — (2011).

In a divorce action, the trial court did not err under subsection (a) of this section in awarding the husband the first $90,000 from the sale of the marital home and equally dividing the remaining proceeds because the parties had received a credit of $90,000 toward the property's purchase price when they traded a property the husband owned prior to the marriage for the marital property. McCormick v. McCormick, 2012 Ark. App. 318, — S.W.3d — (2012).

Division of a retirement account between the husband and wife was appropriate pursuant to subdivision (b)(1) of this section because, by using the formula that it chose, the trial court took into account that the size of the premarital contribution allowed the account to grow more than it would have otherwise been able to do. The appellate court was simply not left with a definite and firm conviction that the trial court made a mistake in dividing the retirement account and the sums that were withdrawn from that account in the manner that it did. Atchison v. Atchison, 2012 Ark. App. 572, — S.W.3d — (2012).

Trial court did not err in a divorce action in awarding the husband all of a $ 1.6 million settlement from his FELA personal injury claim because the FELA proceeds were not marital property, as defined under subdivision (b)(6) of this section; the trial court found that the entire settlement was for a degree of permanent disability and future medical expenses. Palmer v. Palmer, 2012 Ark. App. 607, — S.W.3d —, 2012 Ark. App. LEXIS 729 (Oct. 31, 2012).

Court did not reach the wife's alimony challenge; on remand to find the value of certain ventures and explain reasons for the unequal division in the order, the trial court could reconsider the alimony award. Farrell v. Farrell, 2013 Ark. App. 23, — S.W.3d —, 2013 Ark. App. LEXIS 33 (Jan. 23, 2013).

Subdivision (a)(4) of this section provided that a trial court had to determine the fair market value of securities if the trial court awarded money or other property in lieu of a division of stocks, bonds, and other securities, and although the value of the businesses was within the range provided by expert testimony, the statute required the trial court to expressly find the value of this type of property, and it was necessary to remand this question for such a finding. Farrell v. Farrell, 2013 Ark. App. 23, — S.W.3d —, 2013 Ark. App. LEXIS 33 (Jan. 23, 2013).

In a divorce action, the trial court did not err under subdivision (a)(1)(A) of this section in finding that the wife's interest in the husband's share of a family business was $272,875, and in ordering the husband to pay her $11,370 per month for 24 four months due to the unequal property division because the decree simply required the husband to give the wife half the value of what he already owned. Russell v. Russell, 2013 Ark. App. 151, — S.W.3d — (2013).

Standard of Review.

Overall distribution of the parties' property in the divorce proceeding was not clearly erroneous, because the wife erro-

neously included the children's money and the 2008 tax overpayment in her list of assets purportedly awarded to the husband, the wife did not account for the businesses' liabilities, and the testimony and exhibits introduced by the husband more than adequately demonstrated that the court equally distributed the marital estate. Dew v. Dew, 2012 Ark. App. 122, 390 S.W.3d 764 (2012).

Timing.

Husband's failure to object to the trial court's use of a later valuation date for the parties' assets, contrary to this section, at either his divorce hearing or a later contempt hearing, precluded appellate review of his objection. Roberts v. Yang, 2010 Ark. 55, 370 S.W.3d 170 (2010).

When a husband raised the issue of valuation of a joint account in a motion for a new trial, the trial court correctly ordered the account be divided as of the date of the divorce, pursuant to subdivision (a)(1)(A) of this section, and the date of the entry of the divorce decree be used for valuation of the account. Barnes v. Barnes, 2010 Ark. App. 822, 378 S.W.3d 766 (2010).

Unequal Division.

Evidence of record showed that the husband's ability to pay far exceeded that of the wife; therefore, the trial court's allocation of marital debt was not clearly erroneous and its assignment of tax liability was not arbitrary or groundless. Rudder v. Hurst, 2009 Ark. App. 577, 337 S.W.3d 565 (2009).

Circuit court had to make additional findings regarding whether it considered a four-wheeler marital or nonmarital property under this section, and had to recite its basis and reasons for the unequal division of property in its order, under subdivision (a)(1)(B) of this section; the circuit court did not state why it considered the four-wheeler nonmarital or why it did not divide the stimulus check equally between the parties. Whitehead v. Whitehead, 2009 Ark. App. 593, — S.W.3d — (2009).

Upon disposing of the parties' real property in a marital dissolution proceeding, the trial court did not err by awarding the husband no financial benefit from the residence. It was the wife's separate property, and she testified that she paid 99.9% of the bills. Rasberry v. Rasberry, 2009 Ark. App. 594, 331 S.W.3d 231 (2009).

Trial court did not clearly err under this section by making an unequal division and allowing a wife to keep all of her retirement benefits in the parties' divorce action, as such was an equitable distribution because during their 10-year marriage, the husband had purposely worked below his full earning capacity and remained purposely, chronically underemployed. Grantham v. Lucas, 2011 Ark. App. 491, 385 S.W.3d 337 (2011), review denied, — S.W.3d —, 2012 Ark. LEXIS 27 (Ark. Jan. 19, 2012).

In a divorce proceeding, the trial court erred under subdivision (a)(1)(A) of this section in failing to award the husband any portion of the value of the wife's gift-store inventory because while the court attempted to make as close to a 50/50 distribution of the entire marital estate as possible, the distribution of business assets was uneven, depriving the husband of $9,000. Bamburg v. Bamburg, 2011 Ark. App. 546, 386 S.W.3d 31 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 690 (Ark. Ct. App. Nov. 2, 2011).

It was necessary to remand a divorce case because the trial court failed to comply with subdivision (a)(1)(B) of this section by giving a comprehensive explanation of why it divided the parties' marital property unequally; the trial court did not address the wife's claim that the husband took marital funds for his personal use and that she should be compensated for her share. Watkins v. Watkins, 2012 Ark. App. 27, 388 S.W.3d 53 (2012).

In a marital dissolution action, the court erred under subdivision (a)(1)(B) of this section in not dividing the marital equity in a certificate of deposit held in the husband's name; the court did not recite any reasons in its decree as to why its decision was equitable. Wadley v. Wadley, 2012 Ark. App. 208, 395 S.W.3d 411 (2012).

Division of property was proper, because the court considered all of the relevant statutory factors under this section, and made specific findings concerning its reason for the unequal division of property; the husband acknowledged that the court was correct to consider the contributions of each party in deciding how to

divide property. Waggoner v. Waggoner, 2012 Ark. App. 286, — S.W.3d — (2012).

Trial court did explain its division in the letter opinion, but the trial court did not incorporate that opinion in the decree, and thus the court had to remand this issue for the trial court to satisfy subdivision (a)(i)(B) of this section. Farrell v. Farrell, 2013 Ark. App. 23, — S.W.3d —, 2013 Ark. App. LEXIS 33 (Jan. 23, 2013).

9-12-316. Property settlements.

RESEARCH REFERENCES

ALR. Inherited Property as Marital or Separate Property in Divorce Action. 38 A.L.R.6th 313.

Divorce and Separation: Appreciation in Value of Separate Property During Marriage with Contribution by Either Spouse as Separate or Community Property (Doctrine of "Active Appreciation"). 39 A.L.R.6th 205.

9-12-317. Dissolution of estates by the entirety or survivorship.

CASE NOTES

Presumption.

Arkansas law presumed that a tenancy by the entirety is automatically dissolved upon the entry of a final decree of divorce under subsection (a) of this section; this presumption was strengthened by the circuit court's decree that, as a result of the divorce, it shall be "as though the marriage relation between (the debtors) had never existed." Therefore, debtors' divorce extinguished the tenancy by the entirety and created a tenancy in common with respect to the Wilmar Property; the creation of a tenancy in common was further evidenced by the language of the property settlement agreement. In re White, 450 B.R. 866, 2011 Bankr. LEXIS 1573 (Bankr. E.D. Ark. Apr. 29, 2011).

CHAPTER 13

CHILD CUSTODY AND VISITATION

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

9-13-101. Award of custody.

(a)(1)(A)(i) In an action for divorce, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but solely in accordance with the welfare and best interest of the child.

(ii) In determining the best interest of the child, the court may consider the preferences of the child if the child is of a sufficient age and mental capacity to reason, regardless of chronological age.

(iii) In an action for divorce, an award of joint custody is favored in Arkansas.

(B) When a court order holds that it is in the best interest of a child to award custody to a grandparent, the award of custody shall be made without regard to the sex of the grandparent.

(2)(A) Upon petition by a grandparent who meets the requirements of subsection (b) of this section and subdivision (a)(1) of this section, a circuit court shall grant the grandparent a right to intervene pursuant to Rule 24(a) of the Arkansas Rules of Civil Procedure.

(B)(i) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or younger when:

(a) A grandchild resides with this grandparent for at least six (6) continuous months prior to the grandchild's first birthday;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(ii) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or older when:

(a) A grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(iii) Notice to a grandparent shall be given by the moving party.

(3) For purposes of this section, "grandparent" does not mean a parent of a putative father of a child.

(4)(A) The party that initiates a child custody proceeding shall notify the circuit court of the name and address of any grandparent who is entitled to notice under the provisions of subdivision (a)(1) of this section.

(B) The notice shall be in accordance with § 16-55-114.

(5) As used in this section, "joint custody" means the approximate and reasonable equal division of time with the child by both parents individually as agreed to by the parents or as ordered by the court.

(b)(1)(A)(i) When in the best interest of a child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents consistent with subdivision (a)(1)(A) of this section.

(ii) To this effect, the circuit court may consider awarding joint custody of a child to the parents in making an order for custody.

(iii) If, at any time, the circuit court finds by a preponderance of the evidence that one (1) parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending

joint-custody arrangement, the circuit court may deem such behavior as a material change of circumstances and may change a joint custody order to an order of primary custody to the nondisruptive parent.

(iv) Child support under a joint custody order is issued at the discretion of the court and shall:

(a) Be consistent with Administrative Order No. 10 — Child Support Guidelines; or

(b) Deviate from Administrative Order No. 10 — Child Support Guidelines as permitted by the rule.

(B) If a grandparent meets the requirements of subdivisions (a)(1) and (a)(2)(B) of this section and is a party to the proceedings, the circuit court may consider the continuing contact between the child and a grandparent who is a party, and the circuit court may consider orders to assure the continuing contact between the grandparent and the child.

(2) To this effect, in making an order for custody, the court may consider, among other facts, which party is more likely to allow the child or children frequent and continuing contact with the noncustodial parent and the noncustodial grandparent who meets the requirements of subdivisions (a)(1) and (a)(2)(B) of this section.

(c)(1) If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a direction pursuant to this section.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

(d)(1) If a party to an action concerning custody of or a right to visitation with a child is a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the circuit court may not award custody or unsupervised visitation of the child to the sex offender unless the circuit court makes a specific finding that the sex offender poses no danger to the child.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the care or custody of a sex offender or to have unsupervised visitation with a sex offender.

(3) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the home of a sex offender or to have unsupervised visitation in a home in which a sex offender resides.

(e)(1) The Director of the Administrative Office of the Courts is authorized to establish an attorney ad litem program to represent children in circuit court cases in which custody is an issue.

(2) When a circuit judge determines that the appointment of an attorney ad litem would facilitate a case in which custody is an issue and further protect the rights of the child, the circuit judge may appoint a private attorney to represent the child.

(3)(A) The Supreme Court, with the advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in custody cases.

(B)(i) In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications.

(ii) The attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

(4) When attorneys are appointed pursuant to subdivision (e)(2) of this section, the fees for services and reimbursable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(5)(A) When a circuit judge orders the payment of funds for the fees and expenses authorized by this section, the circuit judge shall transmit a copy of the order to the office, which is authorized to pay the funds.

(B) The circuit court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(6) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

(7) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for ad litem representation in custody cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the Arkansas Judicial Council and the Subcommittee on Administrative Rules and Regulations of the Legislative Council.

(8)(A) The office shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

(B) Statistics shall include the ages of children served, whether the custody issue arises at a divorce or post-divorce stage, whether psychological services were ordered, and any other relevant information.

History. Acts 1979, No. 278, § 1; A.S.A. 1947, § 34-2726; Acts 1997, No. 905, § 1; 1997, No. 1328 § 1; 1999, No. 708, § 2; 2001, No. 1235, § 1; 2001, No. 1497, § 1; 2003, No. 92, § 1; 2005, No. 80, § 1; 2007, No. 56, § 1; 2011, No. 344, § 2; 2013, No. 1156, §§ 1–3.

Amendments. The 2011 amendment added (d)(3).

The 2013 amendment inserted "mental" before "capacity" in (a)(1)(A)(ii); added (a)(1)(A)(iii) and (a)(5); added "consistent with subdivision (a)(1)(A) of this section" in (b)(1)(A)(i); and added (b)(1)(A)(iii) and (iv).

RESEARCH REFERENCES

ALR. Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C.S. § 1912(d). 61 A.L.R.6th 521.

Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

CASE NOTES

Analysis

In General.
Basis of Award.
Change in Custody Warranted.
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In General.

Circuit court did not err in awarding custody of the parties' child to the wife where the circuit court found that the wife was the primary caregiver; no evidence was presented to contradict the wife's testimony that she drank less since the separation and there was no evidence to show that the wife suffered from bulimia. Whitehead v. Whitehead, 2009 Ark. App. 593, — S.W.3d — (2009).

Where the husband of a mother involved in a custody modification was a sex offender and resided in the home with the mother's minor child, thereby creating a situation in which the father and the mother of the child could no longer agree who should have primary physical custody of the child, it was error for the circuit court to continue the joint custody based on the best interests of the child under subdivision (b)(1)(A)(ii) of this section because joint custody or equally divided custody of minor children was permissible. Peck v. Peck, 2009 Ark. App. 731, — S.W.3d — (2009).

Basis of Award.

In a divorce and custody matter, the trial court did not err in failing to award joint custody to the parties where the record plainly demonstrated that the parties could not cooperate well enough to share custody and where the evidence overall demonstrated that the mother was a better choice of custodial parent. Poole v. Poole, 2009 Ark. App. 860, 372 S.W.3d 420 (2009).

Change in Custody Warranted.

Joint custody between a mother and a father with an award of primary physical custody of their child to the mother rather than the father was not in the best interests of the child and was clearly against the preponderance of the evidence because the mother's husband was a registered sex offender and subdivision (d)(2) of this section showed a clear legislative policy that was opposed to children living in the home of a sex offender. Peck v. Peck, 2009 Ark. App. 731, — S.W.3d — (2009).

Change of primary physical custody from a mother to a father was in the best interest of the child where during the year that the father had temporary custody, the father had provided a stable, loving, nurturing environment in which his son had thrived, the father had facilitated visitation between the child and the mother and would continue to do so, and the mother had continued to accept child support from the father and had failed to offer support of any kind. Hatfield v. Miller, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

There was no error in a change of custody of two teenage children from a mother to a father where the mother had attempted to alienate the children from the father by influencing them to interpret every casual physical contact with the father as sexual abuse and where the mother was indifferent to the welfare of the children when she made a decision to relocate from Arkansas to Florida. Hanna v. Hanna, 2010 Ark. App. 58, 377 S.W.3d 275 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 256 (May 6, 2010).

Trial court's final order continuing a joint-custody arrangement under subdivision (b)(1)(A)(ii) of this section was clearly erroneous. There was a mountain of evidence demonstrating that the parties could no longer cooperate in matters affecting their children, including the father's unilateral suspension of the mother's custody, refusal to provide school information, and numerous unsubstantiated complaints to the police and the department of human services. The mother exposed the children to her new husband and exposed the children to smoke in the home. Doss v. Miller, 2010 Ark. App. 95, 377 S.W.3d 348 (2010).

In modifying a child custody arrangement, the trial court did not clearly err in finding that joint custody under subsidivision (b)(1)(A)(ii) of this section could not continue and that it was in the best interests of the children that primary custody be awarded to the father; the parties stipulated to changed circumstances based on their inability to communicate. In considering the children's best interests, the court noted that their son saw his parents together in an occasional relationship, then saw his dad dating other women; the parents did not present a good reality for their son. Collier v. Collier, 2012 Ark. App. 146, — S.W.3d — (2012).

Conduct of Parent.

Where the husband was awarded temporary child custody based on an isolated incident in which the wife had an anxiety attack and threatened to kill herself and her children after she was terminated from employment, the trial court did not err by awarding the wife permanent child custody. The husband also had problems with anxiety and stress management; the wife's anxiety attack was an isolated incident; and the psychological examiners recommended that she be awarded child custody. Rasberry v. Rasberry, 2009 Ark. App. 594, 331 S.W.3d 231 (2009).

Trial court did not clearly err in awarding custody of divorcing parties' children to the husband based on the welfare and best interest of the children where there was evidence that the children were exposed to the wife's adulterous relationship, which was a matter of credibility for the trial court. Moreover, both parties testified that they would encourage a good relationship with the other parent, and it was a credibility determination for the trial court as to whether the husband would follow the court-ordered visitation schedule and facilitate a good relationship. Magee v. Magee, 2013 Ark. App. 108, — S.W.3d — (2013).

Domestic Violence.

In denying appellant father's motion to change child custody, the trial court did not err in failing to apply the presumption in subdivisions (c)(1) and (2) of this section that it was not in the best interest of a child to remain in the custody of an abusive parent because appellee mother's poor housekeeping was not a form of domestic violence. Loftis v. Nazario, 2012 Ark. App. 98, — S.W.3d — (2012).

Grandparents' Rights.

The plain language of this section, read as a whole, shows an intent to allow a grandparent to intervene, and even be awarded custody, when there is an existing custody suit; it does not allow the grandparent to create the custody dispute or initiate a custody action. Therefore, a trial court did not err by dismissing a grandfather's petition for custody of his granddaughter since there was no divorce or custody dispute in which to intervene. Pfeifer v. Deal, 2012 Ark. App. 190, — S.W.3d — (2012).

Modification.

Where the parties could no longer make joint decisions relating to the child, they lived in different counties, and the mother had neglected the child's medical needs, the trial court clearly erred in finding that the father failed to establish a material change in circumstances to justify a change of child custody. Because joint custody had previously been awarded and the mother had never been awarded primary custody, it was an erroneous application of the facts to find that the child should remain with her; the trial court erroneously gave a preference to the mother in its analysis, which was contrary to subdivision (a)(1)(A)(i) of this section. Jones v. Jones, 2009 Ark. App. 571, — S.W.3d — (2009).

Trial court did not err in granting a mother's motion for a directed verdict and in denying a father's petition to change primary custody of his child because the father did not make a prima facie case of a material change of circumstances; the

child was situated in the same home and school and was doing "better" in that setting than he was at the time a previous custody order was entered, and the father's accusations that the child's personal hygiene was being neglected did not constitute a material change of circumstances Lawhead v. Harris, 2010 Ark. App. 77, 374 S.W.3d 71 (2010).

Circuit court did not err in determining that there had been a material change of circumstances and that it was in the best interest of the children to award custody to a father because the children had extremely poor academic performance, were failing, and had behavioral problems at school, that there was little hope for improvement in their after-school care situation, and that the father's efforts to deal with the children's "dismal performance" offered hope for academic and behavioral improvement; the circuit court did not clearly err in finding that the mother had moved to another state without asking for modification to visitation and that the purpose of her move was to frustrate the father's visitation. Harris v. Harris, 2010 Ark. App. 160, 379 S.W.3d 8 (2010).

Although the trial court clearly did not approve of a mother's adulterous conduct both before and after a divorce, proof of that conduct alone did not require a change in custody to the father where the trial court concluded that the interests of the children were better served by leaving primary custody with the mother. Valentine v. Valentine, 2010 Ark. App. 259, 377 S.W.3d 387 (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 357 (Apr. 21, 2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 294 (May 20, 2010).

Finding that there was a change in circumstances sufficient to modify a custody order was not clearly erroneous, as testimony showed that a mother allowed various men to stay overnight in the mother's home and also allowed one man to live there full-time in the presence of the mother's children; testimony showed that the father's household was stable. Shannon v. McJunkins, 2010 Ark. App. 440, 376 S.W.3d 489 (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 570 (June 23, 2010).

Because the circuit court was never made aware, prior to a hearing on a father's change-of-custody motion, of the substantial amount of time a child was spending at the maternal grandparents' house or the issues regarding the father's visitation, the evidence supported a finding of a material change in circumstances; therefore, the circuit court did not err in finding that changing custody of the child from the mother to the father was in the child's best interest. Chaffin v. Chaffin, 2011 Ark. App. 293, — S.W.3d — (2011).

Because a mother presented evidence that the father was effecting an alienation of her parental rights based on his erroneous interpretation of the visitation guidelines, the circuit court erred by failing to view the evidence in a light most favorable to the mother and by exercising its fact-finding powers. Wagner v. Wagner, 2011 Ark. App. 475, — S.W.3d — (2011).

Parental Visitation Rights.

Pursuant to this section, denial of altered visitation, based on the child's best interests, was proper because the child's mother had moved only about an hour's drive away, and the father still enjoyed visitation for at least part of every weekend. Lee v. Eubanks, 2009 Ark. App. 838, — S.W.3d — (2009), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 154 (Mar. 11, 2010).

"Pattern of Domestic Abuse."

Award of custody of the parties' three sons to the husband in the parties' divorce decree was appropriate because, without a statutory definition of "pattern of domestic abuse," the question was one of fact, not law; therefore, the appellate court was unable to say that the trial court was clearly erroneous in finding that two incidents of domestic abuse by the husband against the wife approximately seven years apart, with an intervening act of domestic abuse by the wife upon the husband, did not constitute a pattern of domestic abuse under subsection (c) of this section. Oates v. Oates, 2010 Ark. App. 346, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 517 (June 2, 2010).

Award of custody of the parties' three sons to the husband in the parties' divorce decree was appropriate because the appellate court disagreed with the wife's contention that the trial court should have considered each allegation of abusive conduct, even if it did not amount to "domes-

tic abuse." Subsection (c) of this section required that a person engage in a pattern of domestic abuse; if the acts did not rise to the definition of domestic abuse, they could not have been considered for purposes of the presumption that it was not in the best interest of the child to be placed in the custody of an abusive parent when there was a finding by a preponderance of the evidence that the parent had engaged in a pattern of domestic abuse as defined in § 9-15-103(3)(A). Oates v. Oates, 2010 Ark. App. 346, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 517 (June 2, 2010).

Preference.

Trial court did not err in denying a father's motion to modify custody because there was no reversible error in the trial court's finding that a daughter was not of a sufficient age and capacity to reason that the trial court could consider her preference as to custody; the trial court was in a better position than the court of appeals to judge the credibility of the witnesses, including the daughter. Stacks v. Stacks, 2009 Ark. App. 862, 377 S.W.3d 265 (2009).

Trial court did not err in denying a father's motion to modify custody because its finding that a daughter had not expressed a preference as to custody was not clearly erroneous when the trial court was faced with conflicting testimony, with the father testifying that the children wanted to live with him, the mother disputing that contention, and the daughter testifying that she did not want to hurt anyone's feelings and not expressing a clear preference; the daughter's preference alone was not determinative of which parent would have custody. Stacks v. Stacks, 2009 Ark. App. 862, 377 S.W.3d 265 (2009).

For purposes of this section, this case did not fit a narrowly carved exception to the parental preference rule; it was an initial award of custody involving a biological father who did not abandon the child for a substantial period of time, and thus the trial court erred in awarding custody of the child to the father's mother absent a finding that the father was unfit. Faulkner v. Faulkner, 2013 Ark. App. 277, — S.W.3d — (2013).

Presumptions.

Although a settlement agreement attempted to shift the burden of proving that relocation was in the best interests of the children to the mother as custodial parent, the mother could not legally waive the Hollandsworth presumption, favoring preserving the custodial relationship in spite of relocation, and, thus, the father had the burden of proving that relocation was not in the best interests of the children. Stills v. Stills, 2010 Ark. 132, 361 S.W.3d 823 (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 238 (Apr. 29, 2010).

Judgment awarding custody of the parties' son to the husband was affirmed where (1) there was evidence that the husband was quite capable of being the primary caregiver, as he had been able to handle all aspects of the child's daily routine, including cooking the meals and helping with homework; and (2) although the trial court commented that the child was at a time in his life where it would be a good time to be with his dad, the instant court did not think that this evidenced a bias in favor of the husband. Wise v. Wise, 2010 Ark. App. 184, — S.W.3d — (2010).

Unfitness.

Record was replete with evidence that would have supported a finding that appellant was unfit, given that (1) the child was made to be a part of attempts to falsely accuse a family member of sexual abuse, (2) none of the accusations, which caused the child to be examined at least three times, were substantiated, (3) although appellant's wife was alleged to have made all but the last allegation, appellant said he knew she made them and that he was the one who told her to do so, (4) there were no further abuse allegations once the child was removed from the father's custody, and (5) the father repeatedly violated a court order by not supporting the child, failing to exercise visitation, and thwarting visitation efforts by a grandmother, and yet still the trial court stopped short of making an unfit finding; the trial court erred in awarding custody to the father's mother without finding that the father was unfit, and thus the case was remanded. Faulkner v. Faulkner, 2013 Ark. App. 277, — S.W.3d — (2013).

Cited: Gammill v. Hoover, 2011 Ark. App. 788, — S.W.3d — (2011).

9-13-103. Visitation rights of grandparents when the child is in the custody of a parent.

CASE NOTES

Analysis

Adoption.
Illustrative Cases.
Presumption Not Rebutted.

Adoption.

Mother's adoption by adoptive parents severed a grandmother's relationship with the mother (her daughter), and therefore, the grandmother was no longer a grandparent entitled to visitation under subdivision (b)(2) of this section with the mother's child. The circuit court erred by continuing to recognize the grandmother's visitation rights following the adoption. Scudder v. Ramsey, 2013 Ark. 115, — S.W.3d — (2013).

Illustrative Cases.

Where the mother of a child divorced her father after he was incarcerated for sexual assault and possession of child pornography, the trial court did not err by denying the paternal grandparents' petition for visitation pursuant to this section. The grandparents lacked the capacity to provide guidance to the child, because of their willingness to allow her to visit her biological father in prison; the grandparents also failed to rebut the presumption that the mother's denial or limitation of visitation was in the best interest of the child. Painter v. Kerr, 2009 Ark. App. 580, 336 S.W.3d 425 (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 771 (Nov. 12, 2009).

Grandparent had no standing to assert grandparent visitation rights under subsection (b) of this section regarding a grandchild born out of wedlock because the child had been adopted by the wife of the child's father and, under § 9-9-215(a)(2), was treated as if the blood descendant of the wife and thus was not illegitimate. Walchli v. Morris, 2011 Ark. App. 170, 382 S.W.3d 683 (2011), review denied, — S.W.3d —, 2011 Ark. LEXIS 399 (Ark. Apr. 7, 2011).

Trial court did not err under subdivision (b)(1) of this section in granting visitation to a child's maternal grandmother and great-grandmother because the actions of the child's father were not conducive to maintaining a significant relationship with them and the loss of that relationship would likely harm the child; the child spent 90 percent of the time with them during the first year of the child's life. Pippinger v. Benson, 2011 Ark. App. 442, — S.W.3d — (2011).

Order granting appellees visitation with their grandchildren was reversed because the trial court substituted a benefit analysis for the required statutory presumption in favor of the parent's decision and in so doing, the trial court basically required appellant to prove that visitation would be harmful, losing sight of the fact that it was the parent who had a right to uninterrupted custody. Bowen v. Bowen, 2012 Ark. App. 403, — S.W.3d — (2012).

Award of grandparent visitation was improper. However, because the grandparents established regular contact with the child for at least 12 consecutive months during the child's life while his parents were still married, the grandparents proved a significant and viable relationship under subdivision (d)(1)(C) of this section even though they had not had recent regular contact with the child. Harrison v. Phillips, 2012 Ark. App. 474, — S.W.3d — (2012).

Award of grandparent visitation to the child's paternal grandparents was inappropriate because they failed to rebut the statutory presumption under subsection (e) of this section that the mother's denying visitation was in the child's best interest. There was a lack of evidence that the loss of the grandparents' relationship with the child was likely to harm the child and the trial court made no written findings of the factors it considered in awarding grandparent visitation. Harrison v. Phillips, 2012 Ark. App. 474, — S.W.3d — (2012).

Decision granting the grandmother's petition for grandparent visitation was inappropriate pursuant to subdivision (c)(1) of this section because the trial court failed to address the required element of harm that the child would suffer from a

loss of her relationship with her grandmother and there was insufficient evidence in the record to satisfy the grandmother's burden of proving that element. Thus, the trial court's finding that the grandmother had proved that visitation was in the child's best interest was clearly erroneous. Favano v. Elliott, 2012 Ark. App. 484, — S.W.3d — (2012).

Because the grandparents did not prove that they had been denied visitation, they failed to prove the loss in relationship necessary to satisfy this section. Further, the decision to reverse the order of grandparent visitation was equally based upon the grandparents' failure to show that they could and would cooperate with the father were visitation allowed; therefore, the trial court's finding that the grandparents were willing to cooperate with appellant if visitation was allowed was clearly erroneous. Harvill v. Bridges, 2012 Ark. App. 683, — S.W.3d —, 2012 Ark. App. LEXIS 805 (Dec. 5, 2012).

Presumption Not Rebutted.

Trial court did not err in denying a grandfather's petition for visitation with his grandson, although he had established a meaningful relationship with the child, because the grandfather did not rebut the presumption in subdivision (c)(1) of this section that the mother's decision limiting his visitation was in the best interest of the child. Hollingsworth v. Hollingsworth, 2010 Ark. App. 101, — S.W.3d — (2010).

Circuit court erred by awarding grandparent visitation; because the grandmother's visitation had been limited by the child's father but not altogether denied, she failed to prove the loss in relationship necessary to overcome the presumptive weight given to the parent's decision of whether grandparent visitation was in the best interest of the child under subdivision (c)(1) of this section. Morris v. Dickerson, 2012 Ark. App. 129, 388 S.W.3d 910 (2012).

9-13-105. Criminal records check.

(a) Any parent of a minor child in a circuit court case may petition the court to order a criminal records check of the other parent of the minor child or other adult members of the household eighteen (18) years of age or older who reside with the parent for custody and visitation determination purposes.

(b) If the court determines there is reasonable cause to suspect that the other parent or other adult members of the household eighteen (18) years of age or older who reside with the parent may have engaged in criminal conduct that would be relevant to the issue of custody of the minor child or visitation privileges, the court may order a criminal records check through the Arkansas Crime Information Center, including a check of the sex offender registry, § 12-12-901 et seq.

(c) The court shall review the results of the criminal records check, and if it deems appropriate, provide the results to the petitioning parent.

(d) Any costs associated with conducting a criminal records check shall be borne by the petitioning party.

History. Acts 1997, No. 730, § 1; 2011, No. 344, § 1; 2013, No. 477, § 1.

Amendments. The 2011 amendment subdivided the section; substituted "the minor child or other adult members of the household eighteen (18) years of age or older that reside with the parent for custody and visitation determination purposes" for "a minor child" in (a); and in (b), inserted "or other adult members of the household eighteen (18) years of age or older that reside with the parent" and "including a check of the Sex Offender Registry, § 12-12-901 et seq."

The 2013 amendment deleted "the sheriff of the county in which the petition was filed to conduct" preceding "a criminal records" in (b).

9-13-106. Attorney ad litem programs.

CASE NOTES

Modification.

Pursuant to this section, denial of a modification of child support was proper because the circuit court did not clearly err by not finding a material change based on the alleged increase in the father's income, which was disputed. The record could support a conclusion that the father's income decreased after he became a manager because overtime pay was no longer available to him. Lee v. Eubanks, 2009 Ark. App. 838, — S.W.3d — (2009), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 154 (Mar. 11, 2010).

9-13-107. Visitation rights of grandparents when the parent does not have custody of the child.

(a) For purposes of this section:

(1) "Child" means a minor under eighteen (18) years of age who is:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner; and

(2) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition the circuit court that granted the guardianship or custody of a child for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if the child is in the custody or under the guardianship of a person other than one (1) or both of his or her natural or adoptive parents.

(c) Visitation with the child may be granted only if the court determines that visitation with the petitioner is in the best interest and welfare of the child.

(d)(1) An order granting or denying visitation rights to grandparents and great-grandparents under this section shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation.

(2)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be ordered and exercised in a manner consistent with an order for grandparent visitation with a child awarded under § 9-13-103, which is distinct from a custody and visitation schedule awarded to a parent in a divorce case, unless the court makes a specific finding otherwise.

(B) If the court finds that the petitioner's visitation should be restricted, limited, or expanded in any way, then the court shall include the restrictions, limitations, or expansions in the order granting visitation.

(3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(4) After an order granting or denying visitation has been entered under this section, a party may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

History. Acts 2003, No. 652, § 2; 2013, No. 1512, § 1.

Amendments. The 2013 amendment rewrote (d)(2).

CHAPTER 14
SPOUSAL AND CHILD SUPPORT

SUBCHAPTER.
1. General Provisions.
2. Enforcement Generally.

Subchapter 1 — General Provisions

SECTION.
9-14-104. [Repealed.]

9-14-104. [Repealed.]

Publisher's Notes. This section, concerning failure to support — defense of insanity to contempt proceedings, was repealed by Acts 2013, No. 1119. The section was derived from Acts 1971, No. 433, ch. 6, § 12; A.S.A. 1947, §§ 34-2449, 34-2449n.

9-14-106. Noncustodial parents — Amount of support.

CASE NOTES

Analysis

In General.
Modification.

In General.

Circuit court did not err in determining that the father was not entitled to receive a credit for years of overpayment to the child-support registry against four months of non-payment; the circuit court did not err in its finding of contempt for failure to pay child support, as well as its assessment of child-support arrearages. Guffey v. Counts, 2009 Ark. 410, — S.W.3d — (2009).

While most parents willingly assist their adult children in obtaining a higher education which to many appears to be increasingly necessary in today's fast-changing world, any duty to do so is a moral rather than a legal one, and parents who remain married while their children attend college may continue supporting their children for a period of years past the age of majority, but such support may be conditional or may be withdrawn at anytime, and no one may bring an action to enforce continued payments; it would be fundamentally unfair for courts to enforce these moral obligations of support only against divorced parents while other parents may do as they choose. Mainerich v. Wilson, 2010 Ark. App. 325, 373 S.W.3d 923 (2010).

Modification.

Where a temporary order of child support was issued while divorce proceedings were pending, the father's child support obligation was lowered when the final divorce decree was entered, the payroll coordinator for the father's employer continued to withhold the higher amount to satisfy the father's support obligation, and the father did not notice that more was being withheld than he was required to pay for two years, which resulted in an

overpayment exceeding $15,000, the circuit court did not err in denying the father's motion to modify his support obligation and to compel reimbursement of the overpayment and in concluding that the father's payment was voluntary because the father was aware of the terms of his divorce decree and was in a superior position to know how much child support was being withheld from his check, because the execution of the wage assignment was within his control, and because it was the father's responsibility to verify that he was making child support payments in the correct amount. White v. White, 2009 Ark. App. 790, — S.W.3d — (2009).

Trial court erred in considering a father's financial assistance to his adult daughter and in it method of calculating support because it was error to consider funds the father expended to support the daughter while she was obtaining a higher education as a factor to deviate from the presumptive amount of child support without evidence that the daughter was legally dependent; the trial court erred by merely taking the child support due for two children under the family support chart and dividing the amount by two because no evidence supported the finding that the daughter was dependent, and thus, the presumptively correct chart amount was the amount for one child. Mainerich v. Wilson, 2010 Ark. App. 325, 373 S.W.3d 923 (2010).

Cited: Valentine v. Valentine, 2010 Ark. App. 259, 377 S.W.3d 387 (2010).

9-14-107. Change in payor income warranting modification.

CASE NOTES

Analysis

Deviation from Chart.
Prospective Award.
Retroactive Award.
Tax Record.

Deviation from Chart.

Trial court's ruling that a mother had waived her adult daughter's child support arrearages was reversed and remanded because on the record, the court of appeals could not determine whether the trial court made the required judicial investigation into the compromise agreement between the mother and father prior to its acceptance, and the trial court's failure to make that inquiry would void the judgment as to the compromise; on the record, the court of appeals could not determine two facts essential to the disposition of the issue regarding child support arrearage: (1) whether the requisite judicial inquiry had been undertaken to independently evaluate the compromise and its benefits to the minor, and (2) whether the inquiry had led to the judicial determination that the compromise regarding support was in fact in the minor's best interest. Mainerich v. Wilson, 2010 Ark. App. 325, 373 S.W.3d 923 (2010).

Trial court erred in considering a father's financial assistance to his adult daughter and in it method of calculating support because it was error to consider funds the father expended to support the daughter while she was obtaining a higher education as a factor to deviate from the presumptive amount of child support without evidence that the daughter was legally dependent; the trial court erred by merely taking the child support due for two children under the family support chart and dividing the amount by two because no evidence supported the finding that the daughter was dependent, and thus, the presumptively correct chart amount was the amount for one child. Mainerich v. Wilson, 2010 Ark. App. 325, 373 S.W.3d 923 (2010).

While there was no evidence that a father willfully failed to follow the trial court's child support orders, the record contained no specific written findings about the presumptive amount under the guidelines based upon the father's income or why the presumptive amount was unjust or inappropriate under subsection (c) of this section. Stevenson v. Stevenson, 2011 Ark. App. 552, — S.W.3d — (2011).

Prospective Award.

Trial court is not required to making findings if a child support award is made prospective, pursuant to subsection (d) of this section. Cowell v. Long, 2013 Ark. App. 311, — S.W.3d — (2013).

In a child support modification case, a trial court did not abuse its discretion by failing to award an increase retroactively; the trial court was not required to make findings if the award was prospective, and the trial court was permitted to "otherwise order" the support to be paid prospectively. Cowell v. Long, 2013 Ark. App. 311, — S.W.3d — (2013).

Retroactive Award.

Trial court erred in ordered that a child support arrearage be placed into an interest-bearing account controlled by a father because there was no authority that would allow a court to order that a retroactive amount resulting from an increase in child support be placed in an interest-bearing account. Gilbow v. Travis, 2010 Ark. 9, 372 S.W.3d 319 (2010).

Tax Record.

In a child support modification case, a trial court did not err by relying on a father's tax record in determining his monthly income when it determined that there was a material change of circumstances to support the modification under subdivision (a)(1) of this section; there was no need to consider the net-worth approach. Cowell v. Long, 2013 Ark. App. 311, — S.W.3d — (2013).

Subchapter 2 — Enforcement Generally

SECTION.

9-14-210. Office of Child Support Enforcement — Employment of attorneys — Real party in interest — Scope of representation.

CASE NOTES

Cited: Littles v. Office of Child Support Enforcement, 2009 Ark. App. 686, — S.W.3d — (2009).

9-14-230. Decree as lien on real property.

CASE NOTES

Cited: Trafford v. Lilley, 2010 Ark. App. 158, — S.W.3d — (2010).

9-14-233. Arrearages — Interest and attorney's fees — Work activities and incarceration.

CASE NOTES

Judgment Interest.

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under this section and to attorney fees was barred by res judicata, and res judicata also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under §§ 9-12-314 and 9-14-234. Williams v. Nesbitt, 2012 Ark. App. 408, — S.W.3d — (2012).

9-14-234. Arrearages — Finality of judgment.

CASE NOTES

Analysis

Construction.
Calculation.
Modification.

Construction.

Trial court did not err in stating that the father's additional child support obligation had not yet been reduced to judgment. McWhorter v. McWhorter, 2009 Ark. 458, 344 S.W.3d 64 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 774 (Nov. 5, 2009).

Calculation.

Trial court erred when it failed to include a prior judgment entered in favor of a mother in a child support case, pursuant to § 9-12-314 and this section, when it was calculating a father's arrearage; a remand was necessary to determine whether the judgment was applied to the arrearage. If the amount was not applied, the arrearage amount had to be amended to reflect an inclusion of the judgment amount. Office of Child Support Enforcement v. Harper, 2013 Ark. App. 171, — S.W.3d — (2013).

Modification.

Temporary hearing was not fully completed, and the trial court noted that it lacked enough information to determine the appropriate amount of child support; where a trial court reserved judgment until later determination, there was no error when the trial court made any contemplated adjustments. Rudder v. Hurst, 2009 Ark. App. 577, 337 S.W.3d 565 (2009).

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under § 9-14-233 and to attorney fees was barred by res judicata, and res judicata also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under § 9-12-314 and this section. Williams v. Nesbitt, 2012 Ark. App. 408, — S.W.3d — (2012).

9-14-235. Arrearages — Payment after duty to support ceases.

(a) If a child support arrearage or judgment exists at the time when any child entitled to support reaches the age of majority, is emancipated, or dies, or when the obligor's current duty to pay child support otherwise ceases, the obligor shall continue to pay an amount equal to the court-ordered child support, or an amount to be determined by a court based on the application of guidelines for child support under the family support chart, until such time as the child support arrearage or judgment has been satisfied.

(b) [Repealed.]

(c) Enforcement through income withholding, intercept of unemployment benefits or workers' compensation benefits, income tax intercept, additional payments ordered to be paid on the child support arrearage or judgment, contempt proceedings, or any other means of collection shall be available for the collection of a child support arrearage or judgment until the child support arrearage or judgment is satisfied.

(d) Income withholding under § 9-14-221 may be used to satisfy a child support arrearage or judgment.

(e) As used in this section, "judgment" means unpaid child support and medical bills, interest, attorney's fees, or costs associated with a

child support case when such has been reduced to judgment by the court or become a judgment by operation of law.

(f) The purpose of this section is to allow the enforcement and collection of child support arrearages and judgments after the obligor's duty to pay support ceases.

History. Acts 1989, No. 507, § 1; 1995, No. 1184, § 38; 2001, No. 1248, § 14; 2013, No. 317, § 1.

Amendments. The 2013 amendment substituted "any child entitled to support reaches the age of majority, is emancipated, or dies" for "all children entitled to support reach majority, are emancipated, or die" in (a); and repealed former (b).

CASE NOTES

Applicability.

Trial court did not err in stating that the father's additional child support obligation had not yet been reduced to judgment. McWhorter v. McWhorter, 2009 Ark. 458, 344 S.W.3d 64 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 774 (Nov. 5, 2009).

9-14-236. Arrearages — Child support limited — Limitations period.

CASE NOTES

Applicability.

Statute of limitations, subdivision (a)(2) of this section, had no application to the facts, because the limitation applied to "actions," and the father filed no such action; he only requested that the court recognize and credit him the payments he made pursuant to court order during the relevant time periods that child support was due. McWhorter v. McWhorter, 2009 Ark. 458, 344 S.W.3d 64 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 774 (Nov. 5, 2009).

9-14-237. Expiration of child support obligation.

CASE NOTES

Termination of Support.

Section 9-14-115(e)(1)(A) provides that an adjudicated father is entitled to one paternity test at any time during the period of time that he is required to pay child support, and the period of time in which a non-custodial parent is obligated to pay child support automatically terminates upon the child's 18th birthday pursuant to subdivision (a)(1)(A)(i) of this section. Thus, the period that a father is required to pay child support ends when the child turns 18; likewise, the period of time in which the father can seek a paternity test also ends when the child turns 18. State v. Perry, 2012 Ark. 106, — S.W.3d — (2012).

Where a default judgment was entered in paternity proceedings and the adjudicated father's support obligation was established in 1995, where the Office of Child Support Enforcement (OCSE) instituted proceedings in 2005 to recover support arrearages, and where the adjudicated father requested a paternity test, the circuit court erred in granting the father's motion because the father's motion was untimely in that § 9-10-115(e)(1)(A) allowed an adjudicated father one paternity test during any time period in which he was required to pay child support and the father's child support obligation terminated under this section when the child reached the age of majority. State v. Perry, 2012 Ark. 106, — S.W.3d — (2012).

9-14-239. Suspension of license for failure to pay child support.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Providing for Revocation of Driver's License for Failure to Pay Child Support. 30 A.L.R.6th 483.

CHAPTER 15
DOMESTIC ABUSE ACT

SUBCHAPTER.
2. Judicial Proceedings.

Subchapter 1 — General Provisions

9-15-103. Definitions.

CASE NOTES

Analysis

Evidence.
"Pattern of Domestic Abuse."

Evidence.

Circuit court's finding of no domestic abuse was not clearly erroneous where (1) although the husband admitted that the parties argued, that he pulled the phone out of the wall, and that he closed the living room blinds, the husband testified that he neither threatened the wife, hit her, or hit or threatened his son; and (2) the husband also testified that he did not intend to frighten the wife. Oates v. Oates, 2010 Ark. App. 345, 377 S.W.3d 394 (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 519 (June 2, 2010).

Sufficient evidence supported a finding that a mother committed domestic abuse in violation of this section; the parties were involved in an ongoing dispute, and even though the father did not testify to being afraid, the father had called the police after hearing gun shots on the father's porch and refused to open the father's door until the police arrived. Davenport v. Burnley, 2010 Ark. App. 385, — S.W.3d — (2010).

"Pattern of Domestic Abuse."

Award of custody of the parties' three sons to the husband in the parties' divorce decree was appropriate because, without a statutory definition of "pattern of domestic abuse," the question was one of fact, not law; therefore, the appellate court was unable to say that the trial court was clearly erroneous in finding that two incidents of domestic abuse by the husband against the wife approximately seven years apart, with an intervening act of domestic abuse by the wife upon the husband, did not constitute a pattern of domestic abuse as defined in subdivision (3)(A) of this section. Oates v. Oates, 2010 Ark. App. 346, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 517 (June 2, 2010).

Award of custody of the parties' three sons to the husband in the parties' divorce decree was appropriate because the appellate court disagreed with the wife's contention that the trial court should have considered each allegation of abusive conduct, even if it did not amount to "domestic abuse." Section 9-13-101(c) required that a person engage in a pattern of domestic abuse; if the acts did not rise to the definition of domestic abuse, they could not have been considered for purposes of the presumption that it was not in the best interest of the child to be placed in the custody of an abusive parent when there was a finding by a preponderance of the evidence that the parent had engaged in a pattern of domestic abuse as defined in subdivision (3)(A) of this section. Oates v. Oates, 2010 Ark. App. 346, — S.W.3d —

(2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 517 (June 2, 2010).

Subchapter 2 — Judicial Proceedings

Effective Dates. Acts 2013, No. 282, § 17: Mar. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one-year period; that the effectiveness of this act as soon as possible is essential to the operation of the judiciary and the administration of justice; and that this act is immediately necessary because the delay in the effective date of this act could cause irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

9-15-201. Petition — Requirements generally.

CASE NOTES

Evidence.

Although an ex-wife's petition for an order of protection properly alleged domestic abuse, pursuant to subdivision (e)(1)(A) of this section, there was insufficient evidence to support the trial court's grant of the order because the ex-husband's constant phone calls and harassing emails did not fall under the legislative definition of domestic abuse; there was no evidence the ex-husband's comment of "or else" was in fact some sort of threat of physical or bodily harm. Paschal v. Paschal, 2011 Ark. App. 515, — S.W.3d — (2011).

9-15-202. Filing fees.

(a)(1) The court, clerks of the court, and law enforcement agencies shall not require any initial filing fees or service costs.

(2) A claim or counterclaim for other relief, including without limitation divorce, annulment, separate maintenance, or paternity shall not be asserted in an action brought under this subchapter except to the extent permitted in this subchapter.

(b)(1) Established filing fees may be assessed against the respondent at the full hearing.

(2) Filing fees under this section shall be collected by the county official, agency, or department designated under § 16-13-709 as primar-

ily responsible for the collection of fines assessed in circuit court and shall be remitted on or before the tenth day of each month to the office of county treasurer for deposit to the county administration of justice fund.

(3) The county shall remit on or before the fifteenth day of each month all sums received in excess of the amounts necessary to fund the expenses enumerated in § 16-10-307(b) and (c) during the previous month from the uniform filing fees provided for in § 21-6-403, the uniform court costs provided for in § 16-10-305, and the fees provided for in this section to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration for deposit into the State Administration of Justice Fund.

(c)(1) The abused in a domestic violence petition for relief for a protection order sought under this subchapter shall not bear the cost associated with its filing or the costs associated with the issuance or service of a warrant and witness subpoena.

(2) This subsection does not prohibit a judge from assessing costs against a petitioner if the allegations of abuse are determined after a hearing to be false.

History. Acts 1991, No. 266, § 9; 1995, No. 401, § 1; 2013, No. 282, § 2.

Amendments. The 2013 amendment rewrote the section.

9-15-204. Hearing — Service.

CASE NOTES

Notice.

Because a protective order hearing was a special proceeding under Ark. R. Civ. P. 81, the notice procedures in subdivision (b)(1)(A) of this section, and not Ark. R. Civ. P. 6(c), applied; therefore, because a respondent was timely served six days before the protective order hearing, the respondent's motion to set aside an order of protection was properly dismissed. Wills v. Lacefield, 2011 Ark. 262, — S.W.3d — (2011).

In a case where appellant contended that an order of protection did not comport with the requirements of the law because it was issued after a hearing without appellant receiving actual notice or an opportunity to participate therein, the revocation of probation based on the commission of a felony was appropriate because appellant violated the protective order under § 5-53-134; by pleading guilty, appellant admitted that he knew the order existed, an element of the crime, and that he knowingly violated it. Appellant did not seek to appeal the order of protection, he did not raise a lack of notice before entering his guilty plea, and he did not appeal the judgment following the plea in that case; moreover, the circuit court had jurisdiction over any criminal act within its borders, and appellant admitted to committing the criminal act of violating the protective order. Standridge v. State, 2012 Ark. App. 563, — S.W.3d — (2012).

9-15-205. Relief generally — Duration.

(a) At the hearing on the petition filed under this chapter, upon a finding of domestic abuse as defined in § 9-15-103, the court may provide the following relief:

(1) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(2) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(3)(A) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties.

(B)(i) If a previous child custody or visitation determination has been made by another court with continuing jurisdiction with regard to the minor children of the parties, a temporary child custody or visitation determination may be made under subdivision (a)(3)(A) of this section.

(ii) The order shall remain in effect until the court with original jurisdiction enters a subsequent order regarding the children;

(4) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(5) Allow the prevailing party a reasonable attorney's fee as part of the costs;

(6) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order;

(7) Direct the care, custody, or control of any pet owned, possessed, leased, kept, or held by either party residing in the household; and

(8)(A) Order other relief as the court deems necessary or appropriate for the protection of a family or household member.

(B) The relief may include, but not be limited to, enjoining and restraining the abusing party from doing, attempting to do, or threatening to do any act injuring, mistreating, molesting, or harassing the petitioner.

(b) Any relief granted by the court for protection under the provisions of this chapter shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court, and may be renewed at a subsequent hearing upon proof and a finding by the court that the threat of domestic abuse still exists.

History. Acts 1991, No. 266, § 5; 1999, No. 662, § 2; 1999, No. 1551, § 2; 2007, No. 139, § 1; 2009, No. 698, § 6; 2011, No. 1049, § 1.

Amendments. The 2011 amendment added (a)(7); and redesignated former (a)(7) as (a)(8).

CASE NOTES

Visitation.

Upon entry of a final order of protection, the trial court did not address the issue of visitation; because an award of visitation was discretionary under subdivision (a)(3) of this section and appellant failed to raise the issue with the trial court, the appellate court declined to review it. Hancock v. Hancock, 2013 Ark. App. 79, — S.W.3d — (2013).

9-15-206. Temporary order.

CASE NOTES

Sufficient Evidence.

Evidence was sufficient to support the final order of protection entered against appellant under subsection (a) of this section, because he committed an act of domestic violence against appellee while her children were present and there had been past conduct of the same or similar nature based on appellant's admissions. Hancock v. Hancock, 2013 Ark. App. 79, — S.W.3d — (2013).

9-15-211. [Repealed.]

A.C.R.C. Notes. Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts...."

Publisher's Notes. This section, concerning jurisdiction generally, was repealed by Acts 2011, No. 793, § 4. The section was derived from Acts 1991, No. 266, § 14.

CHAPTER 16

FAMILY PRESERVATION SERVICES PROGRAM ACT

SECTION.
9-16-102. Definitions.

9-16-102. Definitions.

As used in this chapter, "family preservation services" means services for children and families that are designed to help families at risk or in crisis, including adoptive and extended families, and include:

(1) Service programs designed to help a child:

(A) When safe and appropriate, be returned to the family from which he or she has been removed;

(B) Be placed for adoption;

(C) Be placed with a legal guardian; and

(D) If adoption or legal guardianship is determined not to be safe and appropriate for the child, be placed in some other planned, permanent living arrangement;

(2) Preplacement preventive services programs, such as intensive family preservation programs, designed to help a child at risk of foster care placement remain safely with his or her family;

(3) Service programs designed to provide follow-up care to a family to which a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers, including foster parents; and

(5) Services designed to improve parenting skills by reinforcing a parent's confidence in his or her strengths and by helping a parent identify where improvement is needed and to obtain assistance in

improving those skills with respect to matters such as child development, family budgeting, coping with stress, and health and nutrition.

History. Acts 1991, No. 1025, § 2; 2001, No. 906, § 2; 2011, No. 793, § 5.

Amendments. The 2011 amendment added "As used in this chapter" in the introductory language.

CHAPTER 17

UNIFORM INTERSTATE FAMILY SUPPORT ACT

Article 5

Direct Enforcement of Order of Another State Without Registration

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9-17-501. Employer's receipt of income-withholding order of another state.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under this section, and the applicable statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. Schultz v. Butterball, 2012 Ark. 163, — S.W.3d — (2012).

9-17-502. Employer's compliance with income-withholding order of another state.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. Schultz v. Butterball, 2012 Ark. 163, — S.W.3d — (2012).

9-17-505. Penalties for noncompliance.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. Schultz v. Butterball, 2012 Ark. 163, — S.W.3d — (2012).

9-17-506. Contest by obligor.

CASE NOTES

Statutory Scheme.

There was no merit to the argument that the income-withholding statutory scheme violated Ark. Const. Art. 2, § 13, because subsection (a) of this section allowed the employee a way to seek redress in the event the support order was defective. Schultz v. Butterball, 2012 Ark. 163, — S.W.3d — (2012).

9-17-507. Administrative enforcement of orders.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable; the registration requirement of subsection (a) of this section was triggered only if a party sought the assistance of a support-enforcement agency in the state and the obligor contested the validity of the order. Schultz v. Butterball, 2012 Ark. 163, — S.W.3d — (2012).

Article 6

Enforcement and Modification of Support Order After Registration

Part 1 — Registration and Enforcement of Support Order

9-17-602. Procedure to register order for enforcement.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. Schultz v. Butterball, 2012 Ark. 163, — S.W.3d — (2012).

CHAPTER 18

QUALIFIED DOMESTIC RELATIONS ORDERS

SECTION.

9-18-101. Definitions.

CASE NOTES

Appellate Review.

Circuit court clearly erred by entering a judgment against a former husband for $115,936.81 to the benefit of his former wife after her separate account lost value between the time a qualified domestic relations was entered and when she elected distribution. Duncan v. Duncan, 2011 Ark. 348, 383 S.W.3d 833 (2011).

9-18-102. Orders to reach retirement benefits.

CASE NOTES

Appellate Review.

Circuit court clearly erred by entering a judgment against a former husband for $115,936.81 to the benefit of his former wife after her separate account lost value between the time a qualified domestic relations was entered and when she elected distribution. Duncan v. Duncan, 2011 Ark. 348, 383 S.W.3d 833 (2011).

9-18-103. Orders to reach public employees' retirement benefits.

(a) Notwithstanding §§ 24-3-212 [repealed] and 24-7-715 or any other laws of Arkansas limiting the application of legal process to any retirement plans, the Arkansas Teacher Retirement System, the State Police Retirement System, the Arkansas State Highway Employees' Retirement System, the Arkansas Public Employees' Retirement System, the Arkansas Judicial Retirement System, and any other state-supported retirement system shall comply with any qualified domestic relations order as defined in this chapter.

(b) The boards of trustees of the state-supported retirement systems shall:

(1) Establish rules to implement this chapter; and

(2)(A) Adopt a uniform legal form for use in preparing a qualified domestic relations order for each retirement plan.

(B)(i) The state-supported retirement system's uniform legal form of the qualified domestic relations order shall be approved by the Legislative Council.

(ii) A state-supported retirement system is not required to comply with a qualified domestic relations order that does not substantially follow the uniform legal form approved by the Legislative Council.

History. Acts 1993, No. 1143, § 3; 2013, No. 44, § 1.

Amendments. The 2013 amendment rewrote (b).

CHAPTER 19

UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT

Subchapter 1 — General Provisions

9-19-101. Short title.

CASE NOTES

Cited: Hatfield v. Miller, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

9-19-102. Definitions.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

CASE NOTES

Initial Child-Custody Determination.

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, found in subdivision (8) of this section, and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court; the Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. Ullrich v. Walsh, 2010 Ark. App. 290, — S.W.3d — (2010).

9-19-104. Application to Indian tribes.

RESEARCH REFERENCES

ALR. Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C.S. § 1912(d). 61 A.L.R.6th 521.

Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

9-19-105. Internal application of chapter.

RESEARCH REFERENCES

ALR. Applicability and Application of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to International Child Custody and Support Actions. 66 A.L.R.6th 269.

Subchapter 2 — Jurisdiction

9-19-201. Initial child-custody jurisdiction.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision. 52 A.L.R.6th 433.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — Other Than No Significant Connection/Substantial Evidence. 60 A.L.R.6th 193.

CASE NOTES

Jurisdiction.

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-102(8), and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court; the Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. Ullrich v. Walsh, 2010 Ark. App. 290, — S.W.3d — (2010).

9-19-202. Exclusive, continuing jurisdiction.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision. 52 A.L.R.6th 433.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — Other Than No Significant Connection/Substantial Evidence. 60 A.L.R.6th 193.

CASE NOTES

Jurisdiction.

Trial court did not abuse its discretion in retaining jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., where a father and the child had a significant connection with the state of Arkansas and the trial court had continuing, exclusive jurisdiction under subsection (a) of this section. The child had lived in Texas for only one year, the father had remained a resident of Arkansas, and the child had continued to come to Arkansas on a regular basis to visit with the father. Hatfield v. Miller, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

Because a circuit court awarded child custody when it entered a divorce decree, it had exclusive, continuing jurisdiction over the custody determination until it made either of the two determinations set forth in the Uniform Child-Custody Jurisdiction and Enforcement Act, subsection (a) of this section; there was evidence of significant connections with Arkansas when the circuit court determined that it had jurisdiction to decide the father's motion to change custody, and subsection (a) required no additional determination of the availability of substantial evidence. Harris v. Harris, 2010 Ark. App. 160, 379 S.W.3d 8 (2010).

Where a mother relocated to Montana with the parties' child, as the child had lived in Arkansas for all but the last nine months of her life, had extended family in Arkansas, and had regular visitation with her father there, the Arkansas trial court that had issued the initial custody decree did not abuse its discretion by exercising its continuing, exclusive jurisdiction under subsection (a) of this section over the father's motion to modify custody. Shields v. Kimble, 2010 Ark. App. 479, 375 S.W.3d 738 (2010).

9-19-203. Jurisdiction to modify determination.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision. 52 A.L.R.6th 433.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

CASE NOTES

In General.

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-102(8), and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court; the Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. Ullrich v. Walsh, 2010 Ark. App. 290, — S.W.3d — (2010).

9-19-204. Temporary emergency jurisdiction.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Temporary Emergency Jurisdiction Provision. 53 A.L.R.6th 419.

9-19-206. Simultaneous proceedings.

CASE NOTES

In General.

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-102(8), and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court; the Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. Ullrich v. Walsh, 2010 Ark. App. 290, — S.W.3d — (2010).

Arkansas county circuit court did not err in declining to exercise jurisdiction over a child custody matter because California was a more appropriate forum under § 9-19-207(b) as a previous child custody determination was made there and allegations were made that the child had been removed to California to prevent abuse by appellant mother. Casas-Cordero v. Mira, 2012 Ark. App. 457, — S.W.3d — (2012).

9-19-207. Inconvenient forum.

CASE NOTES

In General.

Arkansas was not an inconvenient forum despite the fact that the mother resided in Texas where the child had lived in Texas for only one year, the father had remained a resident of Arkansas, the child had continued to come to Arkansas on a regular basis to visit with the father, and the Arkansas trial court familiar with the case because it had made the initial custody determination and had taken testimony and entered a temporary custody order just weeks earlier. Hatfield v. Miller, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

Because a circuit court awarded child custody when it entered a divorce decree, it had exclusive, continuing jurisdiction over the custody determination until it made either of the two determinations set forth in the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), § 9-19-202(a); the language of the UCCJEA, subdivision (1) of this section, clearly indicates that the court with jurisdiction has discretion to decide whether it should decline to exercise this discretion when there is another appropriate forum. Harris v. Harris, 2010 Ark. App. 160, 379 S.W.3d 8 (2010).

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-102(8), and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court; the Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's

letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. Ullrich v. Walsh, 2010 Ark. App. 290, — S.W.3d — (2010).

Where a child had lived in Montana with her mother for only nine months before her father filed a petition for modification of custody, as the father remained a resident of Arkansas, and the Arkansas trial court found that the child had continued to come to Arkansas on a regular basis to visit with him, it did not abuse its discretion by not declining jurisdiction in favor of Montana under subsection (a) of this section. Shields v. Kimble, 2010 Ark. App. 479, 375 S.W.3d 738 (2010).

Arkansas county circuit court did not err in declining to exercise jurisdiction over a child custody matter because California was a more appropriate forum under subsection (b) of this section as a previous child custody determination was made there and allegations were made that the child had been removed to California to prevent abuse by appellant mother. Casas-Cordero v. Mira, 2012 Ark. App. 457, — S.W.3d — (2012).

9-19-208. Jurisdiction declined by reason of conduct.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

Subchapter 3 — Enforcement

9-19-305. Registration of child-custody determination.

CASE NOTES

Analysis

Application.
Deficiencies in Notice.

Application.

In a divorce case, a trial court erred by awarding a former wife her travel expenses because they were not authorized by Ark. R. Civ. P. 54(d); moreover, subsection (c) of this section had no application as it concerned the registration of child-custody determinations. Clowers v. Stickel, — Ark. App. —, — S.W.3d —, 2012 Ark. App. LEXIS 466 (May 16, 2012).

Deficiencies in Notice.

Trial court did not err in finding that a father substantially complied with the notice provisions of this section as the mother received notice of the hearing on registration of the foreign child custody judgment, filed a motion to dismiss, and appeared before the trial court to argue her motion. Thus, any technical errors involving the number of copies attached to the petition, the lack of a statement that the order had not been modified, the lack of the father's name and address, and the failure of the notice of the hearing to include statements regarding the mother's right to contest the registration of the order at a hearing did not prejudice the mother's ability to present her case. Piccioni v. Piccioni, 2011 Ark. App. 256, — S.W.3d — (2011).

CHAPTER 20

ADULT MALTREATMENT CUSTODY ACT

9-20-103. Definitions.

As used in this chapter:

(1)(A) "Abuse" means with regard to any long-term care facility resident or any person who is at the Arkansas State Hospital an act by a caregiver that falls into any of the following categories:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult, excluding court-ordered medical care or medical care requested by an endangered adult, an impaired adult, or a person who is legally authorized to make a medical decision on behalf of an endangered adult or an impaired adult;

(ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) "Abuse" means with regard to any person who is not a long-term care facility resident or at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult;

(ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause;

(2) "Adult maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult;

(3) "Caregiver" means a related person or an unrelated person, an owner, an agent, a high managerial agent of a public or private organization, or a public or private organization that has the responsibility for the protection, care, or custody of an endangered adult or an impaired adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the circuit court;

(4) "Custodian" means the Department of Human Services while the department is exercising a seventy-two hour hold on an endangered or impaired person or during the effective dates of an order granting custody to the department;

(5) "Department" means the Department of Human Services;

(6) "Endangered adult" means:

(A) An adult eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) An adult resident of a long-term care facility who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(7) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another;

(C) Fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an endangered or an impaired person or long-term care facility resident for monetary or personal benefit, profit, or gain or that results in depriving the person or resident of rightful access to or use of benefits, resources, belongings, or assets; or

(D) Misappropriation of property of a long-term care facility resident;

(8)(A) "Fiduciary" means a person or entity with the legal responsibility to:

(i) Make decisions on behalf of and for the benefit of another person; and

(ii) Act in good faith and with fairness.

(B) "Fiduciary" includes without limitation a trustee, a guardian, a conservator, an executor, an agent under financial power of attorney or health care power of attorney, or a representative payee;

(9) "Imminent danger to health or safety" means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(10)(A) "Impaired adult" means a person eighteen (18) years of age or older who, as a result of mental or physical impairment, is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this chapter, residents of a long-term care facility are presumed to be impaired persons.

(C) For purposes of this chapter, a person with a mental impairment does not include a person who is in need of acute psychiatric treatment, chronic mental health treatment, alcohol or drug abuse treatment, or casework supervision by mental health professionals.

(D) For purposes of this chapter, an adult who has a representative payee appointed for that adult by the Social Security Administration or other authorized agency is presumed to be an impaired adult in relation to adult maltreatment through financial exploitation;

(11)(A) "Less-than-custody order" means an emergency order issued by a circuit court of the State of Arkansas on petition or motion of the department that makes specific orders for the protection of an endangered or impaired adult but does not give the department custody over an endangered or impaired adult.

(B) A less-than-custody order may specify appropriate safeguards, including without limitation:

(i) Prohibiting a legal custodian or guardian of an endangered or impaired adult from having contact with the endangered or impaired adult;

(ii) Prohibiting a legal custodian, guardian, or holder of a power of attorney of an endangered or impaired adult from withdrawing funds from one (1) or more accounts of the endangered or impaired adult or otherwise accessing the assets of the endangered or impaired adult; or

(iii) Requiring the endangered or impaired adult to accept services as directed by the court;

(12) "Long-term care facility" means:

(A) A nursing home;

(B) A residential care facility;

(C) A post-acute head injury retraining and residential facility;

(D) An assisted living facility;

(E) An intermediate care facility for individuals with mental retardation; or

(F) Any facility that provides long-term medical or personal care;

(13) "Long-term care facility resident" means a person eighteen (18) years of age or older living in a long-term care facility;

(14) "Long-term care facility resident maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult resident of a long-term care facility;

(15) "Maltreated adult" means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(16) "Misappropriation of property of a long-term care facility resident" means the deliberate misplacement, exploitation, or wrongful,

temporary, or permanent use of a long-term care facility resident's belongings or money without the long-term care facility resident's consent;

(17) "Neglect" means:

(A) An act or omission by an endangered or an impaired adult, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered or an impaired adult constituting negligent failure to:

(i) Provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or an impaired adult;

(ii) Report health problems or changes in health problems or changes in the health condition of an endangered or an impaired adult to the appropriate medical personnel;

(iii) Carry out a prescribed treatment plan; or

(iv) Provide to an adult resident of a long-term care facility goods or services necessary to avoid physical harm, mental anguish, or mental illness as defined in regulations promulgated by the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services;

(18)(A) "Physical injury" means the impairment of a physical condition or the infliction of substantial pain.

(B) If the person is an endangered or an impaired adult, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(19)(A) "Protective services" means services to protect an endangered or an impaired adult from:

(i) Self-neglect or self-abuse; or

(ii) Abuse or neglect by others.

(B) Protective services may include:

(i) Evaluation of the need for services;

(ii) Arrangements or referrals for appropriate services available in the community;

(iii) Assistance in obtaining financial benefits to which the person is entitled; or

(iv) As appropriate, referrals to law enforcement or prosecutors;

(20) "Resident of a long-term care facility" means a person eighteen (18) years of age or older living in a long-term care facility;

(21) "Serious bodily harm" means physical abuse, sexual abuse, physical injury, or serious physical injury;

(22) "Serious physical injury" means physical injury to an endangered or an impaired adult that:

(A) Creates a substantial risk of death; or

(B) Causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;

(23) "Sexual abuse" means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with

another person who is not the actor's spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and

(24) "Subject of the report" means:

(A) The endangered or an impaired adult;

(B) The adult's legal guardian; and

(C) The offender.

History. Acts 2005, No. 1811, § 1; 2007, No. 135, § 1; 2007, No. 283, § 1; 2007, No. 497, § 1; 2009, No. 526, § 1; 2011, No. 206, § 1; 2013, No. 583, § 1.

Amendments. The 2011 amendment added present (11) and redesignated the remaining subdivisions accordingly.

The 2013 amendment added (10)(D); and rewrote (11).

9-20-108. Jurisdiction — Venue — Eligibility.

(a)(1) The probate division of circuit court shall have jurisdiction over proceedings for:

(A) Custody;

(B) Temporary custody for purposes of evaluation;

(C) Less-than-custody;

(D) Court-ordered protective services; or

(E) An order of investigation under this chapter.

(2) The probate division of circuit court may retain jurisdiction for no more than one hundred eighty (180) days after the death of an adult in the custody of the Department of Human Services to enter orders concerning disposition of the body of the adult as well as any assets of the adult, including the ability to order payment for services rendered or goods purchased by or for the adult while in the custody of the department before the death of the adult.

(b)(1) A proceeding under this chapter shall be commenced in the probate division of the circuit court of the county where:

(A) The maltreated adult resides; or

(B) The maltreatment occurred.

(2)(A) An adult custody proceeding shall not be dismissed if a proceeding is filed in the incorrect county.

(B) If the proceeding is filed in the incorrect county, the adult custody proceeding shall be transferred to the proper county upon discovery of the proper county for venue.

(C) Following the long-term custody hearing, the court may on its own motion or on motion of any party transfer the case to another county if the judge in the other venue agrees to accept the transfer.

(c) Eligibility for services from the department, including custody, for aliens and nonaliens shall be the same eligibility requirements for the Arkansas Medical Assistance Program.

(d) No person may be taken into custody or placed in the custody of the department under this section if that person is in need of:

(1) Acute psychiatric treatment;

(2) Chronic mental health treatment;

(3) Alcohol or drug abuse treatment;

(4) Protection from domestic abuse if that person is mentally competent; or

(5) Casework supervision by mental health professionals.

(e) No adult may be taken into custody or placed in the custody of the department for the sole purpose of consenting to the adult's medical treatment.

(f)(1) If the maltreated adult is found to be indigent and the court appoints the Arkansas Public Defender Commission as counsel for the maltreated adult, the commission shall represent the maltreated adult as to the issue of deprivation of liberty, but not with respect to issues involving property, money, investments, or other fiscal issues.

(2)(A) As to issues requiring court approval under § 9-20-120(b), the commission's role shall be to ensure that qualified medical personnel provide testimony or an affidavit with clear and convincing evidence to support the proposed medical action or inaction.

(B) A hearing is not required if counsel for both parties agree to waive the hearing or if an emergency exists for entry of an order.

(3) If the court appoints the public defender as counsel for the maltreated adult and assets are later identified for the maltreated adult, the court may award an attorney's fee to the commission.

History. Acts 2005, No. 1811, § 1; 2009, No. 526, § 3; 2011, No. 206, § 2.

Amendments. The 2011 amendment inserted present (a)(1)(C) and redesignated the remaining subdivisions accordingly; and in (a)(2), substituted "may retain jurisdiction" for "shall retain jurisdiction" and inserted "no more than."

9-20-113. Evaluations.

(a) The Department of Human Services may petition the circuit court for an order of temporary custody for the purpose of having an adult evaluated if during the course of an investigation under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., the department determines that:

(1) Immediate removal is necessary to protect the adult from imminent danger to his or her health or safety;

(2) Available protective services have been offered to alleviate the danger and have been refused; and

(3) An adequate assessment of the following cannot be made in the adult's place of residence:

(A) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition; or

(B) The adult's mental or physical impairment and ability to protect himself or herself from adult maltreatment.

(b) Upon good cause being shown, the court may issue an order for temporary custody for the purpose of having the adult evaluated.

History. Acts 2005, No. 1811, § 1; 2007, No. 497, § 2; 2011, No. 793, § 6.

Amendments. The 2011 amendment added the introductory language in (a)(3),

and deleted "cannot be adequately assessed in the adult's place of residence" at the end of (a)(3)(A) and (a)(3)(B).

9-20-115. Emergency orders.

(a)(1) If there is probable cause to believe that immediate emergency custody is necessary to protect a maltreated adult, the probate division of circuit court shall issue an ex parte order for emergency custody to protect the maltreated adult.

(2) If there is probable cause to believe that immediate emergency action is necessary to protect an endangered or impaired adult from adult maltreatment, the probate division of circuit court may issue an ex parte less-than-custody order to protect the adult in lieu of an ex parte order for emergency custody.

(b) The Department of Human Services shall obtain an emergency ex parte order of custody on a maltreated adult within seventy-two (72) hours of taking the maltreated adult into emergency custody unless the expiration of the seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody may be extended through the next business day following the weekend or holiday.

(c) The emergency order shall include notice to the maltreated adult and the person from whom physical custody of the respondent was removed of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order.

History. Acts 2005, No. 1811, § 1; 2011, No. 206, § 3; 2013, No. 583, § 2.

Amendments. The 2011 amendment added (d).

The 2013 amendment rewrote the section heading; added (a)(2); and deleted former (d).

9-20-119. Assets of a maltreated adult.

(a)(1) The probate division of circuit court may enter orders as needed to identify, secure, and protect the assets of any adult in the custody of the Department of Human Services or any maltreated adult receiving court-ordered protective services from the department.

(2) If the court orders the adult placed in the custody of the department, the court shall address the issue of the adult's residence, whether rented or owned by the adult, including the cleaning, vacating, selling, or leasing of the residence, and the disposition of the property in the residence.

(3) After review of the assets, the court may order the sale of any assets if it is in the best interest of the adult.

(b) The court may also direct payment from the assets of the adult in department custody or receiving protective services from the department for services rendered or goods purchased by or for the adult in the custody of the department or receiving services from the department.

(c)(1) The court may appoint the department only as custodian of the adult and not as guardian of the person or of the estate of the adult, except to appoint a public guardian under § 28-65-701 et seq.

(2) The court has jurisdiction in this matter to hear and grant a petition for guardianship of the estate of an adult in the custody of the department.

History. Acts 2005, No. 1811, § 1; 2009, No. 526, § 8; 2011, No. 206, § 4.
Amendments. The 2011 amendment added "except to appoint a public guardian under § 28-65-701 et seq" in (c)(1).

9-20-120. Duties and responsibilities of custodian.

(a)(1) If the probate division of circuit court appoints the Department of Human Services as the legal custodian of a maltreated adult, the department shall:

(A) Secure care and maintenance for the person;

(B) Honor any advance directives, such as living wills, if the legal documents were executed in conformity with applicable laws; and

(C) Find a person to be guardian of the estate of the adult if a guardian of the estate is needed.

(2) If the court appoints the department as the legal custodian of a maltreated adult on an emergency, temporary, or long-term basis, the department may:

(A) Consent to medical care for the adult;

(B) Obtain physical or psychological evaluations;

(C) Obtain medical, financial, and other records of the adult; and

(D) Obtain or view financial information of the adult that is maintained by a bank or similar institution.

(b) The department as custodian shall not make any of the following decisions without receiving express court approval:

(1) Consent to abortion, sterilization, psychosurgery, or removal of bodily organs unless a procedure is necessary in a situation threatening the life of the maltreated adult;

(2) Consent to withholding life-saving treatment;

(3) Authorize experimental medical procedures;

(4) Authorize termination of parental rights;

(5) Prohibit the adult from voting;

(6) Prohibit the adult from obtaining a driver's license;

(7) Consent to a settlement or compromise of any claim by or against the adult or his or her estate;

(8) Consent to the liquidation of assets of the adult through such activities as an estate sale;

(9) Amputation of any part of the body; or

(10) Consent to withholding life-sustaining treatment.

(c)(1) Upon the death of a person in the custody of the department, the department shall abide by a prior arrangement made by the person for the disposition of the person's body.

(2) If prior arrangements were not made:

(A) The department may request the court to grant authority to the department to use funds or resources of the deceased person as to the disposition of the body; or

(B) Upon consent from the person's closest family member or after notice and the opportunity to be heard by the court, the department may consent to donate the person's body to medical science.

(3) The department is not responsible for any costs related to the disposition of the person's body.

History. Acts 2005, No. 1811, § 1; 2009, No. 526, § 9; 2011, No. 206, § 5.

Amendments. The 2011 amendment inserted "on an emergency, temporary, or long-term basis" in the introductory language of (a)(2); and added (a)(2)(D).

9-20-122. Evaluation of prospective guardians.

(a) Regarding an individual listed in subsection (b) of this section, the Department of Human Services may:

(1) Request a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulations for convictions regarding violations under this subchapter;

(2) Perform a criminal records check with the Identification Bureau of the Department of Arkansas State Police for convictions regarding violations under this subchapter;

(3) Check the Adult and Long-term Care Facility Resident Maltreatment Central Registry for previous true findings of adult maltreatment;

(4) Request a check of the Adult and Long-term Care Facility Resident Maltreatment Central Registry or its equivalent in the state of residence; and

(5) Perform an evaluation of the home or proposed dwelling for an adult in the Department of Human Services' custody.

(b) Subsection (a) of this section applies to an individual who has:

(1) Requested consideration to be appointed guardian under § 28-65-101 et seq., of an adult in the custody of the department;

(2) Requested custody of an adult in the custody of the department; and

(3) Petitioned a court of competent jurisdiction:

(A) To be appointed guardian, under § 28-65-101 et seq.; or

(B) For custody of an adult in the custody of the Department of Human Services.

History. Acts 2011, No. 206, § 6.

SUBTITLE 3. MINORS

CHAPTER 25

GENERAL PROVISIONS

SECTION.

A.C.R.C. Notes. Acts 1995, No. 1203, formerly noted under this chapter, was amended by Acts 1997, No. 250, § 254, but repealed by Acts 1997, No, 745, § 9. For present law, see § 9-33-101 et seq.

9-25-101. Age of majority — Exceptions.

CASE NOTES

Consensual Sexual Relations.

Section 5-14-125(a)(6), as applied to a high school teacher who engaged in a consensual sexual relationship with an 18-year-old student, who was an adult under subsection (a) of this section, infringed on the teacher's fundamental right to privacy and was not the least restrictive method available for the promotion of the state's interest; therefore, it was unconstitutional. Paschal v. State, 2012 Ark. 127, 388 S.W.3d 429 (2012), rehearing denied, — S.W.3d —, 2012 Ark. LEXIS 214 (Ark. May 3, 2012).

9-25-102. Destruction of property.

(a) The state or any county, city, town, or school district, or any person, corporation, or organization shall be entitled to recover damages in an amount not in excess of five thousand dollars ($5,000) in a court of competent jurisdiction from the parents of any minor under eighteen (18) years of age, living with a parent or legal guardian, who shall maliciously or willfully destroy, damage, or deface real, personal, or mixed property belonging to the state or county, city, town, or school district, or any person, corporation, or organization.

(b) This section does not apply to:

(1) Any destruction of property caused by a minor under eighteen (18) years of age who is in the custody of the Department of Human Services; or

(2) A minor younger than thirteen (13) years of age who defaces property with graffiti.

History. Acts 1959, No. 45, § 1; 1975, No. 283, § 1; 1977, No. 201, § 1; A.S.A. 1947, § 50-109; Acts 1987, No. 36, § 1; 2011, No. 888, § 1.

Amendments. The 2011 amendment added (b); and, in (a), substituted "a parent or legal guardian" for "the parents" and inserted "damage, or deface."

9-25-103. [Repealed.]

Publisher's Notes. This section concerning mother's assent to child's apprenticeship was repealed by Acts 2013, No. 1152, § 8. The section was derived from Acts 1873, No. 126, § 7, p. 382; C. & M. Dig., § 5585; Pope's Dig., § 7235; A.S.A. 1947, § 57-107.

CHAPTER 26

RIGHTS RESPECTING BUSINESS AND PROPERTY

SUBCHAPTER.
2. Arkansas Uniform Transfers to Minors Act.

Subchapter 2 — Arkansas Uniform Transfers to Minors Act

SECTION.
9-26-207. Transfer by obligor.

9-26-207. Transfer by obligor.

(a) Subject to subsections (b) and (c) of this section, a person not subject to § 9-26-205 or § 9-26-206 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to § 9-26-209.

(b) If a person having the right to do so under § 9-26-203 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c)(1) If a custodian has not been nominated under § 9-26-203, or all nominated custodians die before the transfer or are unable, decline, or are ineligible to serve as a custodian, a transfer under this section may be made on behalf of a minor beneficiary to the minor beneficiary's parent or legal guardian, or to a trust company unless the property exceeds ten thousand dollars ($10,000) in value except as provided under subdivision (c)(2) of this section.

(2) A survivor benefit due to a minor by the Arkansas Teacher Retirement System under § 24-7-710(c) may be paid on behalf of a minor beneficiary to the minor beneficiary's parent, legal guardian, or legal custodian or to a trust company unless the value of the survivor benefit exceeds twenty thousand dollars ($20,000) per year.

(3) The Arkansas Teacher Retirement System is not liable for any misuse of funds paid on behalf of a minor beneficiary to a minor beneficiary's parent, legal guardian, or legal custodian under subdivision (c)(2) of this section.

History. Acts 1985, No. 476, § 7; A.S.A. 1947, § 50-940; Acts 2013, No. 174, § 1.

Amendments. The 2013 amendment rewrote (c).

CHAPTER 27

JUVENILE COURTS AND PROCEEDINGS

SUBCHAPTER.
1. General Provisions.
3. Arkansas Juvenile Code.
4. Division of Dependency-Neglect Representation.

Subchapter 1 — General Provisions

9-27-101. [Repealed.]

Publisher's Notes. This section, concerning appointment of supervisor of juvenile court work, was repealed by Acts 2011, No. 591, § 3. The section was derived from Acts 1939, No. 280, § 38; 1941, No. 274, § 7; A.S.A. 1947, § 83-143.

9-27-102. Best interest of the child.

The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children and that our child welfare system needs to be strengthened by establishing a clear policy of the state that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings. The best interest of the child shall be the standard for juvenile court determinations as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

History. Acts 1995, No. 1337, § 1; 2011, No. 591, § 4.

Amendments. The 2011 amendment substituted "Best interest of the child" for "Legislative determinations" in the section heading; and deleted "for recommendations made by employees of the Department of Human Services and" following "shall be the standard" in the last sentence.

CASE NOTES

Balancing Interests.

Department of Health Services did not violate a father's free exercise of religion by creating a reunification plan which required the father to obtain housing and employment separate and apart from a ministry compound because the state's interest in preventing potential harm to the father's minor children outweighed the father's conscientious choice to live on ministry property, work for the ministry, and depend on the ministry for the family's every need. Thorne v. Ark. Dep't of Human Servs., 2010 Ark. App. 443, 374 S.W.3d 912 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 372 (June 24, 2010), overruled in part, Myers v. Ark. Dep't of Human Servs., 2011 Ark. 182, 380 S.W.3d 906 (2011).

9-27-103. [Repealed.]

Publisher's Notes. This section, concerning continuity of educational services to foster children, was repealed by Acts 2011, No. 591, § 5. The section was derived from Acts 2005, No. 1255, § 1; 2007, No. 587, § 1.

Subchapter 3 — Arkansas Juvenile Code

9-27-302. Purposes — Construction.

CASE NOTES

Analysis

Purpose.
Best Interests.

Purpose.

Arkansas Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its jurisdiction under subdivision (1) of this section to act to protect the integrity of the proceeding and to safeguard the rights of the litigants before it when it ordered DHS to correct problems that were preventing work and services. Ark. Dep't of Human Servs. v. Shelby, 2012 Ark. 54, — S.W.3d — (2012).

Best Interests.

Trial court erred under subdivisions (1) and (2)(A) of this section in awarding permanent custody to maternal grandparents on the ground that it was in the children's best interest; while the children's father had some issues to resolve, since the case was commenced, a mere six months before the trial court awarded the grandparents custody, he had no positive drug tests, maintained employment, and was living in an approved housing situation with his parents. Chase v. Ark. Dep't of Human Servs., 2012 Ark. App. 311, — S.W.3d — (2012).

9-27-303. Definitions.

As used in this subchapter:

(1) "Abandoned infant" means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant;

(2) "Abandonment" means:

(A) The failure of the parent to provide reasonable support for a juvenile and to maintain regular contact with a juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future;

(B) The failure of a parent to support or maintain regular contact with a child without just cause; or

(C) An articulated intent to forego parental responsibility;

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(i) Extreme or repeated cruelty to a juvenile;

(ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;

(iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;

(iv) Any injury that is at variance with the history given;

(v) Any nonaccidental physical injury;

(vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:

(a) Throwing, kicking, burning, biting, or cutting a child;

(b) Striking a child with a closed fist;

(c) Shaking a child; or

(d) Striking a child on the face; or

(vii) Any of the following intentional or knowing acts, with or without physical injury:

(a) Striking a child six (6) years of age or younger on the face or head;

(b) Shaking a child three (3) years of age or younger;

(c) Interfering with a child's breathing;

(d) Urinating or defecating on a child;

(e) Pinching, biting, or striking a child in the genital area;

(f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;

(g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;

(h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:

(1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) Narcotics; or

(4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-

counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;

(i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

(j) Subjecting a child to Munchausen syndrome by proxy, also known as factitious illness by proxy, when reported and confirmed by medical personnel or a medical facility.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C) "Abuse" shall not include:

(i) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

(ii) Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(a) The person exercising the restraint is an employee of a residential child care facility licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The person exercising the restraint is acting in his or her official capacity while on duty at a residential child care facility or the residential child care facility is exempt from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(c) The agency has policies and procedures regarding restraints;

(d) Other alternatives do not exist to control the child except for a restraint;

(e) The child is in danger of hurting himself or herself or others;

(f) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(g) The restraint is:

(1) For a reasonable period of time; and

(2) In conformity with training and agency policy and procedures.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and that does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

(4) "Adjudication hearing" means a hearing to determine whether the allegations in a petition are substantiated by the proof;

(5) "Adult sentence" means punishment authorized by the Arkansas Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-

507, for the act or acts for which the juvenile was adjudicated delinquent as an extended juvenile jurisdiction offender;

(6) "Aggravated circumstances" means:

(A) A child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, sexually exploited, or a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification;

(B) A child has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months; or

(C) A child or a sibling has been neglected or abused such that the abuse or neglect could endanger the life of the child;

(7) "Attorney ad litem" means an attorney appointed to represent the best interest of a juvenile;

(8) "Caretaker" means a parent, guardian, custodian, foster parent, significant other of the child's parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;

(9) "Case plan" means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;

(10)(A) "Cash assistance" means short-term financial assistance.

(B) "Cash assistance" does not include:

(i) Long-term financial assistance or financial assistance that is the equivalent of the board payment, adoption subsidy, or guardianship subsidy; or

(ii) Financial assistance for car insurance;

(11) "Commitment" means an order of the court that places a juvenile in the physical custody of the Division of Youth Services of the Department of Human Services for placement in a youth services facility;

(12) "Court" means the juvenile division of circuit court;

(13) "Court-appointed special advocate" means a volunteer appointed by the court to advocate for the best interest of juveniles in dependency-neglect proceedings;

(14)(A) "Custodian" means a person other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order.

(B) For the purposes of who has a right to counsel under § 9-27-316(h), "custodian" includes a person to whom a court of competent jurisdiction has given custody, including a legal guardian;

(15) "Delinquent juvenile" means:

(A) A juvenile ten (10) years old or older who:

(i) Has committed an act other than a traffic offense or game and fish violation that, if the act had been committed by an adult, would

subject the adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state;

(ii) Has violated § 5-73-119; or

(iii) Has violated § 5-71-217(d)(2), cyberbullying of a school employee; or

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

(16)(A) "Department" means the Department of Human Services and its divisions and programs.

(B) Unless otherwise stated in this subchapter, any reference to the department shall include all of its divisions and programs;

(17) "Dependent juvenile" means:

(A) A child of a parent who is in the custody of the department;

(B)(i) A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child.

(ii) If the reason for the incarceration is related to the health, safety, or welfare of the child, the child is not a dependent juvenile but may be dependent-neglected;

(C) A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(D) A child whose custodial parent dies and no appropriate relative or friend is willing or able to provide care for the child;

(E) A child who is an infant relinquished to the custody of the department for the sole purpose of adoption;

(F) A safe haven baby, § 9-34-201 et seq.;

(G) A child who has disrupted his or her adoption, and the adoptive parents have exhausted resources available to them; or

(H)(i) A child who has been a victim of human trafficking as a result of threats, coercion, or fraud.

(ii) If the parent knew or should have known the child was a victim of human trafficking as a result of threats, coercion, or fraud, the child is not a dependent juvenile but may be dependent-neglected;

(18)(A) "Dependent-neglected juvenile" means any juvenile who is at substantial risk of serious harm as a result of the following acts or omissions to the juvenile, a sibling, or another juvenile:

(i) Abandonment;

(ii) Abuse;

(iii) Sexual abuse;

(iv) Sexual exploitation;

(v) Neglect;

(vi) Parental unfitness; or

(vii) Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.

(B) "Dependent-neglected juvenile" includes dependent juveniles;

(19) "Detention" means the temporary care of a juvenile in a physically restricting facility other than a jail or lock-up used for the detention of adults prior to an adjudication hearing for delinquency or pending commitment pursuant to an adjudication of delinquency;

(20) "Detention hearing" means a hearing held to determine whether a juvenile accused or adjudicated of committing a delinquent act or acts should be released or held prior to adjudication or disposition;

(21) "Deviant sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(22) "Disposition hearing" means a hearing held following an adjudication hearing to determine what action will be taken in delinquency, family in need of services, or dependency-neglect cases;

(23) "Extended juvenile jurisdiction offender" means a juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the court;

(24) "Family in need of services" means any family whose juvenile evidences behavior that includes, but is not limited to, the following:

(A) Being habitually and without justification absent from school while subject to compulsory school attendance;

(B) Being habitually disobedient to the reasonable and lawful commands of his or her parent, guardian, or custodian; or

(C) Having absented himself or herself from the juvenile's home without sufficient cause, permission, or justification;

(25)(A) "Family services" means relevant services provided to a juvenile or his or her family, including, but not limited to:

(i) Child care;

(ii) Homemaker services;

(iii) Crisis counseling;

(iv) Cash assistance;

(v) Transportation;

(vi) Family therapy;

(vii) Physical, psychiatric, or psychological evaluation;

(viii) Counseling; or

(ix) Treatment.

(B) Family services are provided in order to:

(i) Prevent a juvenile from being removed from a parent, guardian, or custodian;

(ii) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed;

(iii) Implement a permanent plan of adoption or guardianship for a juvenile in a dependency-neglect case; or

(iv) Rehabilitate a juvenile in a delinquency or family in need of services case;

(26) "Fast track" means that reunification services will not be provided or will be terminated before twelve (12) months of services;

(27)(A) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person.

(B) If the act was committed against the will of the juvenile, then "forcible compulsion" has been used.

(C) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(28) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(29)(A) "Home study" means a written report that is obtained after an investigation of a home by the department or other appropriate persons or agencies and that shall conform to regulations established by the department.

(B)(i) An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within thirty (30) working days of the receipt of the request for the home study.

(ii) The results of the criminal records check shall be provided to the court as soon as they are received.

(C)(i) The person or agency conducting the home study shall have the right to obtain a criminal background check on any person in the household sixteen (16) years of age and older, including a fingerprint-based check of national crime information databases.

(ii) Upon request, local law enforcement shall provide the person or agency conducting the home study with criminal background information on any person in the household sixteen (16) years of age and older;

(30) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(31) "Independence" means a permanency planning hearing disposition known as Another Planned Permanent Living Arrangement (APPLA) for the juvenile who will not be reunited with his or her family and because another permanent plan is not in the juvenile's best interest;

(32) "Juvenile" means an individual who is:

(A) From birth to eighteen (18) years of age, whether married or single; or

(B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of circuit court prior to eighteen (18) years of age and for whom the juvenile division of circuit court retains jurisdiction;

(33) "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;

(34) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses;

(35) "Miranda rights" means the requirement set out in Miranda v. Arizona, 384 U.S. 436 (1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

(36)(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, that constitute:

(i) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

(ii) Failure or refusal to provide the necessary food, clothing, shelter, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness when the existence of this condition was known or should have been known;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that does not pose a risk to the health or safety of the juvenile;

(v) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility;

(vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone:

(a) At an inappropriate age, creating a dangerous situation or a situation that puts the juvenile at risk of harm; or

(b) In inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm;

(viii) Failure to appropriately supervise the juvenile that results in the juvenile being placed in:

(a) Inappropriate circumstances, creating a dangerous situation; or

(b) A situation that puts the juvenile at risk of harm; or

(ix)*(a)* Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally home-schooled; or

(b) As a result of the acts or omissions by the juvenile's parent or guardian, the juvenile is habitually and without justification absent from school.

(B)(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) For the purposes of this subdivision (36)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(*a*) of this section.

(iv) A test of the mother's bodily fluids or bodily substances or the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(*b*) of this section;

(37)(A) "Notice of hearing" means a notice that describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for appointment of counsel, if indigent, or a uniform notice as developed and prescribed by the Supreme Court.

(B) The notice of hearing shall be served in the manner provided for service under the Arkansas Rules of Civil Procedure;

(38) "Order to appear" means an order issued by the court directing a person who may be subject to the court's jurisdiction to appear before the court at a date and time as set forth in the order;

(39)(A) "Out-of-home placement" means:

(i) Placement in a home or facility other than placement in a youth services center, a detention facility, or the home of a parent or guardian of the juvenile; or

(ii) Placement in the home of an individual other than a parent or guardian, not including any placement when the court has ordered

that the placement be made permanent and ordered that no further reunification services or six-month reviews are required.

(B) "Out-of-home placement" shall not include placement in a youth services center or detention facility as a result of a finding of delinquency;

(40) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(41) "Paternity hearing" means a legal proceeding to determine the biological father of a juvenile;

(42) "Permanent custody" means custody that is transferred to a person as a permanency disposition in a juvenile case and the case is closed;

(43) "Pornography" means:

(A) Pictures, movies, and videos lacking serious literary, artistic, political, or scientific value that when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(44)(A) "Predisposition report" means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any disability, the name of the juvenile's attorney and, if appointed by the court, the date of the appointment, any participation by the juvenile or his or her family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile, and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family.

(B) The predisposition report shall include a home study of any out-of-home placement that may be part of the disposition;

(45) "Prosecuting attorney" means an attorney who is elected as district prosecuting attorney, the duly appointed deputy prosecuting attorney, or any city prosecuting attorney;

(46) "Protection plan" means a written plan developed by the department in conjunction with the family and support network to protect the juvenile from harm and which allows the juvenile to remain safely in the home;

(47) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile who claims to be or is alleged to be the biological father of the juvenile;

(48)(A)(i) "Reasonable efforts" means efforts to preserve the family before the placement of a child in foster care to prevent the need for removing the child from his or her home and efforts to reunify a family made after a child is placed out of his or her home to make it possible for him or her to safely return home.

(ii) Reasonable efforts shall also be made to obtain permanency for a child who has been in an out-of-home placement for more than twelve (12) months or for fifteen (15) of the previous twenty-two (22) months.

(iii) In determining whether or not to remove a child from a home or return a child back to a home, the child's health and safety shall be the paramount concern.

(iv) The department or other appropriate agency shall exercise reasonable diligence and care to utilize all available services related to meeting the needs of the juvenile and the family.

(B) The juvenile division of circuit court may deem that reasonable efforts have been made when the court has found that the first contact by the department occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided.

(C) Reasonable efforts to reunite a child with his or her parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

(i) Subjected the child to aggravated circumstances;

(ii) Committed murder of any child;

(iii) Committed manslaughter of any child;

(iv) Aided or abetted, attempted, conspired, or solicited to commit the murder or the manslaughter;

(v) Committed a felony battery that results in serious bodily injury to any child;

(vi) Had the parental rights involuntarily terminated as to a sibling of the child;

(vii) Abandoned an infant as defined in subdivision (1) of this section; or

(viii) Registered with a sex offender registry under the Adam Walsh Child Protection and Safety Act of 2006.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

(49) "Residence" means:

(A) The place where the juvenile is domiciled; or

(B) The permanent place of abode where the juvenile spends an aggregate of more than six (6) months of the year;

(50)(A) "Restitution" means actual economic loss sustained by an individual or entity as a proximate result of the delinquent acts of a juvenile.

(B) Such economic loss shall include, but not be limited to, medical expenses, funeral expenses, expenses incurred for counseling services, lost wages, and expenses for repair or replacement of property;

(51) "Safety plan" means a plan ordered by the court to be developed for an adjudicated delinquent sex offender under § 9-27-356 who is at moderate or high risk of reoffending for the purposes of § 9-27-309;

(52) "Sexual abuse" means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live human sexual activity;

(B) By a person eighteen (18) years of age or older to a person who is younger than fifteen (15) years of age and is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or

(iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact.

(C) By a person twenty (20) years of age or older to a person who is younger than sixteen (16) years of age who is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact; or

(iii) Solicitation of sexual intercourse, solicitation of deviant sexual activity, or solicitation of sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing listening to a phone sex line; or

(vi) An act of voyeurism; and

(E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, attempted deviant sexual activity, or attempted sexual contact by forcible compulsion;

(53)(A) "Sexual contact" means any act of sexual gratification involving:

(i) Touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile;

(ii) Encouraging the juvenile to touch the offender in a sexual manner; or

(iii) Requesting the offender to touch the juvenile in a sexual manner.

(B) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment.

(C) This section shall not permit normal, affectionate hugging to be construed as sexual contact;

(54) "Sexual exploitation" includes:

(A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:

(i) Prostitution;

(ii) Obscene photographing; or

(iii) Obscene filming; and

(B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose;

(55) "Shelter care" means the temporary care of a juvenile in physically unrestricting facilities under an order for placement pending or under an adjudication of dependency-neglect or family in need of services;

(56) "Significant other" means a person:

(A) With whom the parent shares a household; or

(B) Who has a relationship with the parent that results in the person acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;

(57) "Temporary custody" means custody that is transferred to a person during the pendency of the juvenile court case when services are being provided to achieve the goal of the case plan;

(58) "Trial placement" means that custody of the juvenile remains with the department, but the juvenile is returned to the home of a parent or the person from whom custody was removed for a period not to exceed sixty (60) days;

(59) "UCCJEA" means the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(60) "UIFSA" means the Uniform Interstate Family Support Act, § 9-17-101 et seq.;

(61) "Victim" means any person or entity entitled to restitution as defined in subdivision (50) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

(62)(A) "Voyeurism" means looking for the purpose of sexual arousal or gratification into a private location or place in which a juvenile may reasonably be expected to be nude or partially nude.

(B) This definition does not apply to delinquency actions;

(63) "Youth services center" means a youth services facility operated by the state or a contract provider; and

(64) "Youth services facility" means a facility operated by the state or its designee for the care of juveniles who have been adjudicated delinquent or convicted of a crime and who require secure custody in either a physically restrictive facility or a staff-secured facility operated so that a juvenile may not leave the facility unsupervised or without supervision.

History. Acts 1989, No. 273, § 3; 1993, No. 468, § 4; 1993, No. 1126, §§ 1, 2; 1993, No. 1227, § 1; 1994 (2nd Ex. Sess.), No. 11, § 1; 1994 (2nd Ex. Sess.), No. 36, § 1; 1995, No. 532, §§ 1-4; 1995, No. 804, § 1; 1995, No. 811, § 2; 1995, No. 1261, § 13; 1997, No. 208, § 8; 1997, No. 1227, § 1; 1999, No. 401, §§ 2-4; 1999, No. 1192, § 12; 1999, No. 1340, §§ 1-7, 35; 2001, No. 1503, § 1; 2001, No. 1610, § 1; 2003, No. 1166, § 2; 2003, No. 1319, §§ 1-8; 2005, No. 1176, § 3; 2005, No. 1191, § 1; 2005, No. 1990, § 1; 2007, No. 587, §§ 3-9; 2009, No. 956, § 5; 2011, No. 792, §§ 1-5; 2011, No. 793, § 7; 2011, No. 1175, § 1; 2013, No. 761, § 1; 2013, No. 1055, §§ 1–7, 18; 2013, No. 1431, § 3.

A.C.R.C. Notes. Pursuant to Acts 2011, No. 793, § 9, the amendments of § 9-27-303 by Acts 2011, No. 793, § 7 were deemed to be superseded by Acts 2011, No. 792, § 1.

Acts 2013, No. 1431, § 1, provided: "LEGISLATIVE FINDINGS.

"The General Assembly finds that:

"(1) The successful recruitment and retention of school employees is essential to maintaining the state's constitutional obligation to provide a free and efficient system of public education;

"(2) A safe and civil environment in any school is necessary for school employees to meet the objective of providing opportunities for students to learn and achieve high academic standards;

"(3) Cyberbullying of school employees has become a national problem, subjecting school employees to many forms of intentional harassment that can be emotionally and professionally devastating;

"(4) Because of the nature of online communications, students may feel they can act with anonymity and detachment when they are engaging in cyberbullying of a school employee;

"(5) Some examples of the means used by students are:

"(A) Building a fake profile or website;

"(B) Posting or encouraging others to post on the Internet private, personal, or sexual information pertaining to a school employee;

"(C) Posting an original or edited image of the school employee on the Internet;

"(D) Accessing, altering, or erasing any computer network, computer data, computer program, or computer software, including breaking into a password-protected account or stealing or otherwise accessing passwords of a school employee;

"(E) Making repeated, continuing, or sustained electronic communications, including electronic mail or other transmissions, to a school employee;

"(F) Making, or causing to be made, and disseminating an unauthorized copy of data pertaining to a school employee in any form, including without limitation the printed or electronic form of computer data, computer programs, or computer software residing in, communicated by, or produced by a computer or computer network;

"(G) Signing up a school employee for a pornographic Internet site; or

"(H) Without authorization of the school employee, signing up a school employee for electronic mailing lists or to receive junk electronic messages and instant messages; and

"(6) This act is intended to heighten public attention to this crime and further protect an Arkansas public school employee from cyberbullying."

Amendments. The 2011 amendment by No. 792 substituted "a residential child care facility" for "an agency" in (3)(C)(ii)(*a*); inserted present (3)(C)(ii)(*b*) and redesignated the remaining subdivisions accordingly; added (47)(C)(viii); substituted "thirteen (13)" for "ten (10)" in (51)(A) and (51)(D); substituted "fifteen (15)" for "sixteen (16)" in (51)(B)(i); inserted (51)(B)(i)(*c*) and (51)(B)(ii); deleted "and" at the end of (60); and added (62) and (63).

The 2011 amendment by No. 793 redesignated (3)(C)(ii)(*f*)(*1*) and (*2*) as (3)(C)(ii)(*f*) and deleted "The restraint" preceding "is in conformity."

The 2011 amendment by No. 1175 substituted "advocate for the best interest of" for "provide services to" in (13).

The 2013 amendment by No. 761 redesignated former (14) as (14)(A); and added (14)(B).

The 2013 amendment by No. 1055, in (2)(A), added "The" at the beginning, inserted "for a juvenile," and deleted "and support or maintain regular contact with a juvenile without just cause" at the end; redesignated (2)(B) as present (2)(C); and inserted present (2)(B); in (6)(A), deleted "or" following "cruelty," inserted "sexually exploited," and inserted "or is"; and added (6)(C); added "or guardianship subsidy" at the end of (10)(B)(i); added (17)(H); substituted "for a juvenile in a dependency-neglect case" for "or rehabilitation of the juvenile" in (25)(B)(iii); and added (25)(B)(iv); in (36)(A), deleted "and education required by law, excluding failure to follow an individualized education program" following "shelter" in (ii), divided former (vii) into present (vii) and (vii)(*a*), and added (vii)(*b*) and, (viii), and (ix); substituted "legal proceeding" for "proceeding brought pursuant to bastardy jurisdiction" in (41); inserted present (42) and redesignated the remaining subsections accordingly; inserted "to be" in present (47); substituted "before" for "prior to" in present (48)(A)(i); added "of 2006" at the end of present (48)(C)(viii); substituted "fourteen (14)" for "thirteen (13)" in (52)(A); redesignated (52)(B)(i) and (B)(i)(*a*) through (*c*) as (52)(B) and (B)(i) through (iii); substituted "deviant" for "deviate" in (52)(B)(iii); redesignated (52)(B)(ii) as (52)(C)(i) through (iii); redesignated former (52)(C) and (D) as (52)(D) and (E); substituted "fourteen (14)" for "thirteen (13)" in present (52)(E); substituted "under" for "pursuant to" twice in present (55); inserted present (56) and (57); substituted "subdivision (50)" for "subdivision (49)" in present (61); and deleted former (62) and (63) defining "Temporary custody" and "Permanent custody," respectively.

The 2013 amendment by No. 1431 deleted "any juvenile" at the end of (15); substituted "A juvenile ten" for "Ten" in (15)(A); redesignated former (15)(A) as present (15)(A)(i) and (15)(A)(ii); and inserted (15)(A)(iii).

CASE NOTES

Analysis

Appeal.
Delinquent Juvenile.
Dependent Juvenile.
Dependent-Neglect Adjudication.
Dependent-Neglected Juvenile.
Directed Verdict.
Jurisdiction.
Neglect.
Sexual Abuse.
Sexual Contact.

Appeal.

Order finding that a father's three children were dependent-neglected under subdivision (18)(A)(iii) of this section based upon his sexual abuse of one of the children was proper because the father failed to object to supporting documentation attached to a report to the prosecuting attorney; hence, that assignment of error could not be reviewed on appeal. Blanchard v. Ark. Dep't of Human Servs., 2010 Ark. App. 785, 379 S.W.3d 686 (2010).

Trial court did not err in terminating the mother's parental rights because there was sufficient evidence to support a finding that termination was in the child's best interest, and the Arkansas Department of Human Services had proved that the mother had abandoned the child and had subjected him to aggravated circumstances under § 9-27-341(b)(3)(B)(ix)(*a*)(*3*)(*B*) and subdivision (1) of this section. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. Fant v. Ark. Dep't of Human Servs., 2012 Ark. App. 428, — S.W.3d — (2012).

Delinquent Juvenile.

Because a juvenile's father had not resorted to use of a deadly weapon during an argument, because there had been an interlude of approximately five minutes since their last confrontation, because the father, at the time he was struck, had turned away from the juvenile, and because the juvenile did not testify as to whether the juvenile's beliefs were reasonable, the juvenile lacked justification under §§ 5-1-102(18), 5-2-606(a)(1), 5-2-

607(a)(1), (2), and was properly adjudicated as a delinquent for second-degree domestic battering. D.W. v. State, 2011 Ark. App. 187, — S.W.3d — (2011).

Dependent Juvenile.

On appeal from the termination of her parental rights, the mother's argument that it was a logical fallacy and inconsistent with legislative intent under § 9-27-341(b)(3)(B)(i)(*a*) that the definition of "dependent-neglected juvenile" included a "dependent" child was without merit because the statute's clear and unambiguous language expressed that a dependent-neglected juvenile included a dependent juvenile. The child met the definition of a "dependent juvenile" under subdivision (17)(A) of this section because his mother was in the custody of the Arkansas Department of Human Services; moreover, subdivision (18)(B) of this section provided that a dependent-neglected juvenile included dependent juveniles and therefore, the child also fell within the definition of a dependent-neglected juvenile. K.C. v. Ark. Dep't of Human Servs., 2010 Ark. App. 353, 374 S.W.3d 884 (2010), rehearing denied, K. C. v. Ark. Dep't of Human Servs., — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 482 (May 26, 2010), review denied, K. C. v. Ark. Dep't of Human Servs., — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 371 (June 24, 2010).

Dependent-Neglect Adjudication.

Where appellant allowed his daughter to live in the residence of a ministry with a man who was accused of perpetrating physical and sexual abuse against children, appellant's failure to protect his daughter from potential harm was more than enough to warrant her being found dependent-neglected within the meaning of subdivision (18)(A) of this section. The evidence also showed that appellant's daughter was not properly immunized, was diagnosed with child maltreatment syndrome-sexual and adjustment disorder with anxiety, and mental health therapy was recommended; there was sufficient evidence to declare her dependent-neglected. Seago v. Ark. Dep't of Human Servs., 2009 Ark. App. 767, 360 S.W.3d 733 (2009).

Circuit court did not err in adjudicating children dependent-neglected under subdivision (18) of this section after they were removed from a ministry compound because the evidence established a clear picture of the danger to children in the ministry compound because there was testimony that many children were beaten, placed on fasts, and imprisoned in a warehouse for eight months; there was further evidence that the ministry leader molested girls and "married" several young girls and that it was normal for underage girls to be married to much older men. In spite of evidence demonstrating that sexual abuse of underage girls, beatings, and fasts were widely known within the ministry, the father denied knowing of any potential danger to his children; the evidence sufficiently demonstrated that the environment in which the father placed his children was dangerous. Broderick v. Ark. Dep't of Human Servs., 2009 Ark. App. 771, 358 S.W.3d 909 (2009).

Father's argument that the circuit court erred in adjudicating the child dependent-neglected because, although the mother's relapse into drugs might have constituted such neglect, there was no evidence that he neglected the child, was without merit. The juvenile code was not concerned, at the adjudication stage, with which parent committed the acts constituting dependency-neglect; because of the mother's relapse into drug use, the child was unquestionably dependent-neglected, as defined in subdivisions (18)(A) and (36)(A)(iv) of this section. Tadlock v. Ark. Dep't of Human Servs., 2009 Ark. App. 841, 372 S.W.3d 403 (2009).

Evidence was sufficient to support the circuit court's adjudication that a father's son was dependency-neglected because the father failed to supervise due to drinking, caused his son mental and physical injury due to alcohol abuse, and was an unfit parent because of the alcohol abuse, and there was ample evidence that the father abused alcohol, drank before driving his automobile with his son as a passenger, and drank before wrecking a golf cart in which his son was riding; the father acknowledged that he had not stopped drinking at the time of the hearing and had no good reason for not doing so, and it was the opinion of the sons' therapist that the father's drinking caused the son stress and negative behaviors, that the son demonstrated signs of emotional abuse, and that he suffered mental injury caused by the father. Hays

v. Ark. HHS, 2009 Ark. App. 864, 372 S.W.3d 830 (2009).

Although the circuit court abused its discretion in allowing intoxication testimony under the business-records exception to hearsay evidence, Ark. R. Evid. 803(6), a father suffered no actual prejudice by the testimony, and its admission was harmless; the testimonies of the son's mother, a police officer, the son's therapist, and his caseworker, coupled with the father's driving while intoxicated convictions and his admissions about use of alcohol, were more than sufficient to substantiate findings that the father's neglect and parental unfitness arose from alcohol abuse and had a negative effect on the child. Hays v. Ark. HHS, 2009 Ark. App. 864, 372 S.W.3d 830 (2009).

Adjudication order finding that the father's two children were dependent-neglected was affirmed because direct proof of sexual gratification was not necessary in that such a purpose could be inferred from the circumstances; the son stated that the father touched him inappropriately on his genitals and buttocks in a manner that made him feel uncomfortable. Ashcroft v. Ark. Dep't of Human Servs., 2010 Ark. App. 244, 374 S.W.3d 743 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 225 (Apr. 22, 2010).

Adjudication of the mother's daughter as dependent-neglected was appropriate pursuant to § 9-27-303(18)(A) and (36)(A) because, although the child testified that her stepfather sexually abused her and that the abuse had gone on for some time, the mother testified that she did not think that the child was being truthful and that she did not believe that the stepfather posed any danger to the child in the home. Given that testimony, the appellate court was unable to say that the trial court's determination that the mother failed to protect her child was against the preponderance of the evidence. Jackson v. Ark. Dep't of Human Servs., 2010 Ark. App. 246, 374 S.W.3d 198 (2010).

Trial court's finding that a mother's children were dependent-neglected pursuant to subdivision (18)(A) of this section was not clearly against the preponderance of the evidence and the trial court did not abuse its discretion in affording greater weight to the opinion a forensic psychologist, who conducted a psychological examination of the mother, than on a social worker's opinion because the mother's history of chaotic relationships and living situations soundly supported the psychologist's prognosis that the mother's chances of achieving stability were poor; at the time the Arkansas Department of Human Services (DHS) took the children into custody, they were living with their maternal grandmother because the mother wanted to avoid having DHS take them into custody, the mother and her methamphetamine-addicted husband had lived with a family friend for over a year, during which time the friend had molested one of her children, and the mother failed a drug test and did not have a job. McCann v. Ark. Dep't of Human Servs., 2010 Ark. App. 828, — S.W.3d — (2010).

Adjudication of the child as dependent-neglected was supported by evidence that the mother used drugs, which exposed the mother to criminal liability, which inevitably would affect the child's well being because the mother could not care for the child if incarcerated, and the mother's ability to care for the child may have been impaired while under the influence. Maynard v. Ark. Dep't of Human Servs., 2011 Ark. App. 82, 389 S.W.3d 627 (2011).

Sufficient evidence supported a circuit court's adjudication of two children as dependent-neglected as the parents had a history of drug use, and there was nothing to prevent them from removing the children from a grandmother's house. The children were at substantial risk of neglect or parental unfitness as defined by this section. Chambers v. Ark. Dep't of Human Servs., 2011 Ark. App. 91, — S.W.3d — (2011).

Trial court properly found that the Arkansas Department of Health and Human Services had proven by a preponderance of the evidence that the child of a mother and a father was dependent-neglected under subdivision (18)(A) of this section due to the condition of the house in which he lived as there were numerous things that the caseworker observed in the house that could harm the child, including open containers of chemicals, knives and guns within his reach, broken glass on the floor, and various unsanitary conditions. Duvall v. Ark. Dep't of Human Servs., 2011 Ark. App. 261, 378 S.W.3d 873 (2011).

Trial court did not err under subdivision (18)(A) of this section in adjudicating a

mother's daughter dependent-neglected on the ground that the daughter was at substantial risk of future sexual abuse by her six-year-old brother because the mother had missed her psychological-evaluation appointment and resisted efforts to remedy household instability and neglect. Weatherspoon v. Ark. Dep't of Human Servs., 2012 Ark. App. 34, — S.W.3d — (2012).

Sufficient evidence supported the trial court's determination that appellant's children were dependent-neglected based on an allegation of abuse by choking under subdivision (3)(A) of this section, because appellant's daughter testified that her father held her down on a bed, placed his hands around her neck, and choked her; she was not able to breathe. Her brother confirmed that the choking took place and his father ordered him to restrain her legs during the incident; a family-service worker also testified that appellant admitted to her that the incident occurred. Lynch v. Ark. Dep't of Human Servs., 2012 Ark. App. 149, — S.W.3d — (2012).

The order adjudicating appellant's daughter dependent-neglected was affirmed because the daughter had been involved in a fight with a male and had suffered a head injury, which required medical attention, and the daughter showed up at a hearing in juvenile court without a parent or guardian present. Lowe v. Ark. Dep't of Human Servs., 2012 Ark. App. 155, — S.W.3d — (2012).

Finding that the adopted daughter was dependent-neglected as a result of sexual abuse by the father was not clearly erroneous, because the daughter testified that her father first touched her inappropriately when she was eleven years old, the daughter testified that the abuse hurt and that she would try to pull away, and the court expressly found the testimonies of the daughter and the certified sexual-assault examiner to be both credible and consistent with each other. Wells v. Ark. Dep't of Human Servs., 2012 Ark. App. 176, — S.W.3d — (2012).

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. Johnson v. Ark. Dep't of Human Servs., 2012 Ark. App. 244, — S.W.3d — (2012).

Order in which the child was adjudicated dependent-neglected was affirmed because there was a true prior finding by investigators that appellant and the paternal grandfather subjected the child to extreme and repeated cruelty; appellant and the paternal grandfather would record inappropriate interviews with the child that were emotionally traumatizing. Stoliker v. Ark. Dep't of Human Servs., 2012 Ark. App. 415, — S.W.3d — (2012).

Trial court did not err under subdivision (18)(A) of this section in adjudicating a mother's infant son dependent-neglected because the trial court was faced with the uncontested prior finding that one of the infant's siblings had been physically abused while under the age of one, even though the offender was unknown. Eason v. Ark. Dep't of Human Servs., 2012 Ark. App. 507, — S.W.3d — (2012).

Evidence was sufficient to support the trial court's decision adjudicating appellant's children dependent-neglected under subdivisions (18)(A)(v)-(vi) of this section, because they were in her care the day she was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Appellant's conduct constituted neglect and placed the children at risk of substantial harm. Gaer v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 516, — S.W.3d — (2012).

Dependent-Neglected Juvenile.

On appeal from the termination of her parental rights, the mother's argument that it was a logical fallacy and inconsistent with legislative intent under § 9-27-341(b)(3)(B)(i)(*a*) that the definition of "dependent-neglected juvenile" included a "dependent" child was without merit because the statute's clear and unambiguous language expressed that a dependent-neglected juvenile included a dependent juvenile. The child met the definition of a "dependent juvenile" under subdivision (17)(A) of this section because his mother was in the custody of the Arkansas Department of Human Services; moreover, subdivision (18)(B) of this section provided that a dependent-neglected juvenile included dependent juveniles and there-

fore, the child also fell within the definition of a dependent-neglected juvenile. K.C. v. Ark. Dep't of Human Servs., 2010 Ark. App. 353, 374 S.W.3d 884 (2010), rehearing denied, K. C. v. Ark. Dep't of Human Servs., — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 482 (May 26, 2010), review denied, K. C. v. Ark. Dep't of Human Servs., — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 371 (June 24, 2010).

Order finding that a mother's 11-month-old child was dependent-neglected under subdivision (18)(A) of this section on the basis that she subjected the child to Munchausen Syndrome by Proxy was proper; even though no medical professional had raised any concerns prior to the child's admission to the hospital, the appellate court deferred to the trial court's superior position to observe the parties and judge the witnesses' credibility. Parker v. Ark. Dep't of Human Servs., 2011 Ark. App. 18, 380 S.W.3d 471 (2011).

Trial court did not err in adjudicating parents' children dependent-neglected under subdivision (18)(A) of this section because injuries to their infant had to be the result of a high-force trauma, and a caregiver would have had to know the infant suffered the trauma; yet no one sought medical care for the infant immediately after whatever event caused the injuries, which consisted of multiple rib fractures, a skull fracture, bruises, and retinal hemorrhaging. Churchill v. Ark. HHS, 2012 Ark. App. 530, — S.W.3d — (2012).

Children were improperly removed from a father's care under subdivision (18)(A) of this section and determined to be dependent-neglected because the evidence did not support a finding of inadequate supervision based on the father's lost knife, and the evidence did not clearly establish that the father cut a child with a knife. Moreover, there was no indication that the father's hitting a child on the face or head with his hand was knowing and intentional or whether it occurred on more than one occasion. Figueroa v. Ark. Dep't of Human Servs., 2013 Ark. App. 83, — S.W.3d — (2013).

Directed Verdict.

Although a circuit court's grant of a directed verdict by the Department of Human Services at the close of its case in chief in a dependency-neglect proceeding under this section was improper under Ark. R. Civ. P. 50(a), the appellate court refused to reverse the adjudication order because the parents failed to raise their Rule 50 argument in the trial court. Reid v. Ark. Dep't of Human Servs., 2010 Ark. App. 156, — S.W.3d — (2010).

Jurisdiction.

Circuit court had jurisdiction to hear the case even though it concerned child-custody law and was outside the subject of proceedings in the juvenile division, because the designation of divisions was for the purpose of judicial administration and not for the purpose of subject matter jurisdiction, and the creation of divisions would in no way limit the powers and duties of the judges to hear all matters within the jurisdiction of the circuit court; once the juvenile division of the circuit court ordered that the child be placed in the permanent custody of the third parties, the child was no longer dependent-neglected and she came into dependency-neglect proceedings due to parental neglect and parental unfitness. Young v. Ark. Dep't of Human Servs., 2012 Ark. 334, — S.W.3d — (2012).

Neglect.

Adjudication of the mother's daughter as dependent-neglected was appropriate pursuant to subdivisions (18)(A) and (36)(A) of this section because, although the child testified that her stepfather sexually abused her and that the abuse had gone on for some time, the mother testified that she did not think that the child was being truthful and that she did not believe that the stepfather posed any danger to the child in the home. Given that testimony, the appellate court was unable to say that the trial court's determination that the mother failed to protect her child was against the preponderance of the evidence. Jackson v. Ark. Dep't of Human Servs., 2010 Ark. App. 246, 374 S.W.3d 198 (2010).

In a case in which a mother appealed a circuit court's order adjudicating her daughter dependent-neglected, the crux of the mother's argument was that her mere suspicion of sexual abuse did not give rise to the statutory requirement for neglect that she knew or had reasonable cause to know of the sexual abuse by her daughter's stepfather; however, the circuit court found that she had suspicions that the

abuse was occurring and not only failed to prevent it, but actually facilitated the abuse by leaving her daughter home alone with the stepfather. While the mother was not the person who sexually abused her daughter, the fact remained that her daughter was found to be at substantial risk of serious harm as a result of sexual abuse; thus her daughter was dependent-neglected. Lipscomb v. Ark. Dep't of Human Servs., 2010 Ark. App. 257, — S.W.3d — (2010).

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

Sexual Abuse.

Adjudication of the mother's daughter as dependent-neglected was appropriate pursuant to subdivisions (52)(C)(i) and (53)(A)(i) of this section because, although the child testified that her stepfather sexually abused her by putting his hand inside her underwear and by putting his fingers inside her body and that the abuse had gone on for some time, the mother testified that she did not think that the child was being truthful and that she did not believe that the stepfather posed any danger to the child in the home. Given that testimony, the appellate court was unable to say that the trial court's determination that the mother failed to protect her child was against the preponderance of the evidence. Jackson v. Ark. Dep't of Human Servs., 2010 Ark. App. 246, 374 S.W.3d 198 (2010).

Sexual Contact.

Adjudication of the mother's daughter as dependent-neglected was appropriate pursuant to subdivisions (52)(C)(i) and (53)(A)(i) of this section because, although the child testified that her stepfather sexually abused her by putting his hand inside her underwear and by putting his fingers inside her body and that the abuse had gone on for some time, the mother testified that she did not think that the child was being truthful and that she did not believe that the stepfather posed any danger to the child in the home. Given that testimony, the appellate court was unable to say that the trial court's determination that the mother failed to protect her child was against the preponderance of the evidence. Jackson v. Ark. Dep't of Human Servs., 2010 Ark. App. 246, 374 S.W.3d 198 (2010).

Cited: Bayron v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 75, 388 S.W.3d 482 (2012).

9-27-306. Jurisdiction.

(a)(1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including but not limited to:

(A)(i) Proceedings in which a juvenile is alleged to be delinquent as defined in this subchapter, including juveniles ten (10) to eighteen (18) years of age.

(ii) The court may retain jurisdiction of a juvenile delinquent up to twenty-one (21) years of age if the juvenile committed the delinquent act prior to eighteen (18) years of age;

(B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years of age, except for the following:

(i)*(a)* A juvenile who has been adjudicated dependent or dependent-neglected prior to eighteen (18) years of age may request the court to continue jurisdiction until twenty-one (21) years of age so long as the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month toward gaining self-sufficiency.

(b) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment, or is working at least eighty (80) hours a month toward gaining self-sufficiency.

(c) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from instruction or treatment; or

(ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction to receive independent living or transitional services if the juvenile:

(a) Was adjudicated dependent or dependent-neglected;

(b) Was in foster care at eighteen (18) years of age;

(c) Left foster care but desires to submit to the jurisdiction of the court prior to twenty-one (21) years of age to benefit from independent living or transitional services; or

(d) Left foster care and decides to submit to the jurisdiction of the court and return to foster care to receive transitional services, if funding is available.

(C) Proceedings in which emergency custody or a seventy-two-hour hold has been taken on a juvenile under § 9-27-313 or the Child Maltreatment Act, § 12-18-101 et seq.;

(D) Proceedings in which a family is alleged to be in need of services as defined by this subchapter, which shall include juveniles from birth to eighteen (18) years of age, except for the following:

(i) A juvenile whose family has been adjudicated as a family in need of services and who is in foster care before eighteen (18) years of age may request that the court continue jurisdiction until twenty-one (21) years of age if the juvenile is engaged in a course of instruction or treatment, or is working at least eighty (80) hours a month towards self-sufficiency to receive independent living or transitional services;

(ii) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment to receive independent living services; or

(iii) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from the instruction or treatment to receive independent living services;

(E) Proceedings for termination of parental rights for a juvenile under this subchapter;

(F) Proceedings in which custody of a juvenile is transferred to the Department of Human Services;

(G) Proceedings for which a juvenile is alleged to be an extended juvenile jurisdiction offender pursuant to § 9-27-501 et seq.;

(H) Proceedings for which a juvenile is transferred to the juvenile division from the criminal division under § 9-27-318;

(I) Custodial placement proceedings filed by the department; and

(J) Proceedings in dependency-neglect or family in need of services matters to set aside an order of permanent custody upon the disruption of the placement.

(2) A juvenile shall not under any circumstance remain under the court's jurisdiction past twenty-one (21) years of age.

(3)(A) When the department exercises custody of a juvenile under the Child Maltreatment Act, § 12-18-101 et seq., files a petition for an ex parte emergency order, or files a petition for dependency-neglect concerning that juvenile, before or subsequent to the other legal proceeding, any party to that petition may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition.

(B) Upon the motion's being filed, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case.

(4) The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside the State of Arkansas.

(b) The assignment of cases to the juvenile division of circuit court shall be as described by the Supreme Court in Administrative Order Number 14, originally issued April 6, 2001.

(c)(1) The circuit court shall have concurrent jurisdiction with the district court over juvenile curfew violations.

(2) For juvenile curfew violations, the prosecutor may file a family in need of services petition in circuit court or a citation in district court.

(d) The circuit court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state that are transferred to it pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

History. Acts 1989, No. 273, § 5; 1993, No. 468, § 5; 1995, No. 533, § 1; 2001, No. 987, § 1; 2001, No. 1262, § 1; 2003, No. 1166, § 4; 2003, No. 1319, § 9; 2005, No. 1191, § 2; 2005, No. 1990, § 2; 2007, No. 257, § 1; 2009, No. 758, §§ 9, 10; 2009, No. 956, § 6; 2011, No. 792, §§ 6, 7.

Amendments. The 2011 amendment added (a)(1)(J); and substituted "files a petition for an ex parte emergency order, or files a petition for dependency-neglect" for "and a dependency-neglect petition is filed by the department" in (a)(3)(A).

CASE NOTES

Analysis

Exclusive Jurisdiction.
Transfer.

Exclusive Jurisdiction.

Arkansas Department of Human Services (DHS) was not entitled to certiorari relief in a dependency-neglect proceeding because the circuit court was within its exclusive jurisdiction to act to protect the integrity of the proceeding and to safeguard the rights of the litigants before it when it ordered DHS to correct problems

that were preventing work and services. Ark. Dep't of Human Servs. v. Shelby, 2012 Ark. 54, — S.W.3d — (2012).

Transfer.

As the criminal division of the circuit court lost its exclusive jurisdiction over a juvenile's case when it transferred the case to the juvenile division pursuant to § 9-27-318, the criminal division lacked authority to later set aside its transfer order, and that order was a nullity. C.H. v. State, 2010 Ark. 279, 365 S.W.3d 879 (2010).

Cited: Hays v. Ark. HHS, 2009 Ark. App. 864, 372 S.W.3d 830 (2009).

9-27-309. Confidentiality of records.

CASE NOTES

Cited: C.L. v. State, 2012 Ark. App. 374, — S.W.3d — (2012).

9-27-311. Required contents of petition.

(a) The petition shall set forth the following:

(1)(A) The name, address, gender, social security number, and date of birth of each juvenile subject of the petition.

(B) A single petition for dependency-neglect or family in need of services shall be filed that includes all siblings who are subjects of the petition;

(2) The name and address of each of the parents or the surviving parent of the juvenile or juveniles;

(3) The name and address of the person, agency, or institution having custody of the juvenile or juveniles;

(4) The name and address of any other person, agency, or institution having a claim to custody or guardianship of the juvenile or juveniles;

(5) In a proceeding to establish paternity, the name and address of both the putative father and the presumed legal father, if any; and

(6) In a dependency-neglect proceeding, the name and address of a putative parent, if any.

(b) If the name or address of anyone listed in subsection (a) of this section is unknown or cannot be ascertained by the petitioner with reasonable diligence, this shall be alleged in the petition and the petition shall not be dismissed for insufficiency, but the court shall direct appropriate measures to find and give notice to the persons.

(c)(1) All persons named in subdivisions (a)(1)-(3) of this section and subdivision (a)(6) of this section shall be made defendants and served as required by this subchapter.

(2) However:

(A) In all paternity actions, the petitioner shall be required to name as defendants only the mother, the putative father, and the presumed legal father, if any; and

(B) In dependency-neglect petitions the juvenile shall not be named as a defendant but shall be named in the petition as a respondent and shall be served as a party defendant under § 9-27-312.

(d)(1) The petition shall set forth the following in plain and concise words:

(A) The facts that, if proven, would bring the family or juvenile within the court's jurisdiction;

(B) The section of this subchapter upon which jurisdiction for the petition is based;

(C) The relief requested by the petitioner; and

(D) If a petition for delinquency proceedings, any and all sections of the criminal laws allegedly violated.

(2)(A) The petition shall be supported by an affidavit of facts.

(B) A supporting affidavit of facts shall not be required for delinquency, paternity, or termination of parental rights petitions.

History. Acts 1989, No. 273, § 10; 1989 (3rd Ex. Sess.), No. 34, § 2; 1995, No. 1184, § 19; 1997, No. 1085, § 1; 1997, No. 1227, § 2; 1999, No. 1340, §§ 10, 11; 2011, No. 1175, § 2.

Amendments. The 2011 amendment rewrote (c), redesignated it as (c)(1), and added (c)(2).

CASE NOTES

Insufficient Evidence.

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. Johnson v. Ark. Dep't of Human Servs., 2012 Ark. App. 244, — S.W.3d — (2012).

9-27-313. Taking into custody.

(a)(1) A juvenile only may be taken into custody without a warrant before service upon him or her of a petition and notice of hearing or order to appear as set out under § 9-27-312:

(A) Pursuant to an order of the circuit court under this subchapter;

(B) By a law enforcement officer without a warrant under circumstances as set forth in Rule 4.1 of the Arkansas Rules of Criminal Procedure; or

(C) By a law enforcement officer or by a duly authorized representative of the Department of Human Services if there are clear, reasonable grounds to conclude that the juvenile is in immediate danger and that removal is necessary to prevent serious harm from his or her surroundings or from illness or injury and if parents, guardians, or others with authority to act are unavailable or have not taken action necessary to protect the juvenile from the danger and there is not time to petition for and to obtain an order of the court before taking the juvenile into custody.

(2) When any juvenile is taken into custody without a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(b)(1) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the judge of the division of circuit court out of which the warrant was issued and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(2) The judge shall decide whether the juvenile should be tried as a delinquent or a criminal defendant pursuant to § 9-27-318.

(c) When a law enforcement officer, a representative of the department, or other authorized person takes custody of a juvenile alleged to be dependent-neglected or under the Child Maltreatment Act, § 12-18-101 et seq., he or she shall:

(1)(A) Notify the department and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(B) The notification to the parents shall be in writing and shall include a notice:

(i) That the juvenile has been taken into foster care;

(ii) Of the name, location, and phone number of the person at the department whom they can contact about the juvenile;

(iii) Of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter;

(iv) Of the location and telephone number of the court; and

(v) Of the procedure for obtaining a hearing; or

(2) Return the juvenile to his or her home.

(d)(1)(A) A law enforcement officer shall take a juvenile to detention, immediately make every effort to notify the custodial parent, guardian, or custodian of the juvenile's location, and notify the juvenile intake officer within twenty-four (24) hours so that a petition may be filed if a juvenile is taken into custody for:

(i) Unlawful possession of a handgun, § 5-73-119(a)(1);

(ii) Possession of a handgun on school property, § 5-73-119(b)(1);

(iii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(iv) Any felony committed while armed with a firearm; or

(v) Criminal use of prohibited weapons, § 5-73-104.

(B) The authority of a juvenile intake officer to make a detention decision pursuant to § 9-27-322 shall not apply when a juvenile is detained pursuant to subdivision (d)(1)(A) of this section.

(C) A detention hearing shall be held by the court pursuant to § 9-27-326 within seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day.

(2) If a juvenile is taken into custody for an act that would be a felony if committed by an adult, other than a felony listed in subdivision (d)(1)(A) of this section, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A)(i) Take the juvenile to detention.

(ii) The intake officer shall be notified immediately to make a detention decision pursuant to § 9-27-322 within twenty-four (24)

hours of the time the juvenile was first taken into custody, and the prosecuting attorney shall be notified within twenty-four (24) hours.

(iii) If the juvenile remains in detention, a detention hearing shall be held no later than seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the court and release the juvenile and within twenty-four (24) hours notify the juvenile intake officer and the prosecuting attorney so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(3) If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A) Notify the juvenile intake officer, who shall make a detention decision pursuant to § 9-27-322;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the circuit court and release the juvenile and notify the juvenile intake officer and the prosecuting attorney within twenty-four (24) hours so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(4)(A) In all instances when a juvenile may be detained, the juvenile may be held in a juvenile detention facility or a seventy-two-hour holdover if a bed is available in the facility or holdover.

(B) If not, an adult jail or lock-up may be used, as provided by § 9-27-336.

(5) In all instances when a juvenile may be detained, the intake officer shall immediately make every effort possible to notify the juvenile's custodial parent, guardian, or custodian.

(e) When a law enforcement officer takes custody of a juvenile under this subchapter for reasons other than those specified in subsection (c) of this section concerning dependent-neglected juveniles or subsection (d) of this section concerning delinquency, he or she shall:

(1)(A)(i) Take the juvenile to shelter care, notify the department and the intake officer of the court, and immediately make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location.

(ii) The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter, of the location and telephone number of the court, and of the procedure for obtaining a hearing.

(B)(i) In cases when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or lives out of state

and the juvenile has been absent from his or her home or domicile for more than twenty-four (24) hours, the juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(iii) A juvenile held under this subdivision (e)(1)(B) must be separated from detained juveniles charged or held for delinquency.

(iv) A juvenile may not be held under this subdivision (e)(1)(B) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state; or

(2) Return the juvenile to his or her home.

(f) If no delinquency petition to adjudicate a juvenile taken into custody is filed within twenty-four (24) hours after a detention hearing or ninety-six (96) hours or, if the ninety-six (96) hours ends on a Saturday, Sunday, or a holiday, at the close of the next business day, after an alleged delinquent juvenile is taken into custody, whichever is sooner, the alleged delinquent juvenile shall be discharged from custody, detention, or shelter care.

History. Acts 1989, No. 273, § 12; 1993, No. 882, § 1; 1994 (2nd Ex. Sess.), No. 55, § 2; 1994 (2nd Ex. Sess.), No. 56, § 2; 1999, No. 1340, § 12; 2001, No. 1582, § 1; 2001, No. 1610, § 2; 2003, No. 1166, § 8; 2005, No. 1990, § 5; 2009, No. 758, § 12; 2011, No. 873, § 1.

Amendments. The 2011 amendment inserted "or, if the ninety-six (96) hours ends on a Saturday, Sunday, or a holiday, at the close of the next business day" in (f).

CASE NOTES

Removal.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

9-27-314. Emergency orders.

(a)(1) In any case in which there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent the juvenile's removal from the state, the circuit court shall issue an ex

parte order for emergency custody to remove the juvenile from the custody of the parent, guardian, or custodian and shall determine the appropriate plan for placement of the juvenile.

(2)(A) In any case in which there is probable cause to believe that an emergency order is necessary to protect the health or physical well-being of the juvenile from immediate danger, the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile.

(B) Specific appropriate safeguards shall include without limitation the authority of the court to restrict a legal custodian from:

(i) Having any contact with the child; or

(ii) Removing a child from a placement if the:

(a) Legal custodian placed or allowed the child to remain in that home for more than six (6) months; and

(b) Department of Human Services has no immediate health or physical well-being concerns with the placement.

(3) In any case in which there is probable cause to believe that a juvenile is a dependent juvenile as defined in this subchapter, the court shall issue an ex parte order for emergency custody placing custody of the dependent juvenile with the Department of Human Services.

(b) The emergency order shall include:

(1) Notice to all defendants and respondents named in the petition of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order;

(2) Notice of their right to be represented by counsel;

(3)(A) Notice of their right to obtain appointed counsel, if eligible, and the procedure for obtaining appointed counsel.

(B) A court may appoint counsel for the parent or custodian from whom legal custody was removed in the ex parte emergency order and determine eligibility at the probable cause hearing; and

(4) The address and telephone number of the court and the date and time of the probable cause hearing, if known.

(c)(1) Immediate notice of the emergency order shall be given by the petitioner or by the court to the parents, guardians, or custodian and the juvenile.

(2) All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

History. Acts 1989, No. 273, § 13; 1995, No. 533, § 4; 1999, No. 1340, § 32; 2005, No. 1990, § 6; 2007, No. 587, § 11; 2009, No. 758, § 13; 2011, No. 792, § 8; 2011, No. 1175, § 3.

Amendments. The 2011 amendment by No. 792 rewrote (a)(2)(A); and added (a)(2)(B).

The 2011 amendment by No. 1175 substituted "all defendants and respondents named in the petition" for "the juvenile's parents, custodian, or guardian" in (b)(1); added the (b)(3)(A) designation and (b)(3)(B) and substituted "eligible" for "indigent" in (b)(3)(A); substituted "Notice of their right" for "Their right" in (b)(2) and (b)(3)(A); substituted "Notice of their right" for "Their right" in (b)(2) and (b)(3)(A); and, in (b)(4), substituted "address" for "location" and "date and time of the probable cause hearing, if known" for "procedure for obtaining a hearing."

9-27-315. Probable cause hearing.

(a)(1)(A) Following the issuance of an emergency order, the circuit court shall hold a probable cause hearing within five (5) business days of the issuance of the ex parte order to determine if probable cause to issue the emergency order continues to exist.

(B)(i) The hearing shall be limited to the purpose of determining whether probable cause existed to protect the juvenile and to determine whether probable cause still exists to protect the juvenile.

(ii) However, the issues as to custody and delivery of services may be considered by the court and appropriate orders for that entered by the court.

(2)(A) All other issues, with the exception of custody and services, shall be reserved for hearing by the court at the adjudication hearing, which shall be a separate hearing conducted subsequent to the probable cause hearing.

(B) By agreement of the parties and with the court's approval, the adjudication hearing may be conducted at any time after the probable cause hearing, subject to § 9-27-327(a)(2).

(b) The petitioner shall have the burden of proof by a preponderance of evidence that probable cause exists for continuation of the emergency order.

(c) If the court determines that the juvenile can safely be returned to his or her home pending adjudication and it is in the best interest of the juvenile, the court shall so order.

(d)(1) At the probable cause hearing, the court shall set the time and date of the adjudication hearing.

(2) [Repealed.]

(3) A written order shall be filed by the court or by a party or party's attorney, as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(e) All probable cause hearings are miscellaneous proceedings as defined in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules of evidence, including, but not limited to, the hearsay rule, Rule 802 of the Arkansas Rules of Evidence, are not applicable.

History. Acts 1989, No. 273, § 14; 1993, No. 1227, § 3; 1995, No. 533, § 5; 1995, No. 1337, § 2; 1997, No. 1227, § 3; 1999, No. 1340, § 33; 2003, No. 1319, § 11; 2005, No. 1990, § 7; 2013, No. 1055, § 8.

Amendments. The 2013 amendment repealed (d)(2), concerning a probable cause hearing.

9-27-316. Right to counsel.

(a)(1) In delinquency and family in need of services cases, a juvenile and his or her parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's

first appearance before the circuit court that the juvenile has the right to be represented at all stages of the proceedings by counsel.

(2) An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews.

(b)(1)(A) The inquiry concerning the ability of the juvenile to retain counsel shall include a consideration of the juvenile's financial resources and the financial resources of his or her family.

(B) However, the failure of the juvenile's family to retain counsel for the juvenile shall not deprive the juvenile of the right to appointed counsel if required under this section.

(2) After review by the court of an affidavit of financial means completed and verified by the parent of the juvenile and a determination by the court that the parent or juvenile has the ability to pay, the court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorney's fees and expenses for representation of a juvenile.

(3) All moneys collected by the circuit clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "juvenile representation fund".

(4) The court may direct that money from this fund be used in providing counsel for juveniles under this section in delinquency or family in need of services cases and indigent parents or guardians in dependency-neglect cases as provided by subsection (h) of this section.

(5) Any money remaining in the fund at the end of the fiscal year shall not revert to any other fund but shall carry over into the next fiscal year in the juvenile representation fund.

(c) If counsel is not retained for the juvenile or it does not appear that counsel will be retained, counsel shall be appointed to represent the juvenile at all appearances before the court unless the right to counsel is waived in writing as set forth in § 9-27-317.

(d) In a proceeding in which the judge determines that there is a reasonable likelihood that the proceeding may result in the juvenile's commitment to an institution in which the freedom of the juvenile would be curtailed and counsel has not been retained for the juvenile, the court shall appoint counsel for the juvenile.

(e) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(f)(1) The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Supreme Court to represent the best interest of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier.

(2) The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem.

(3) Each attorney ad litem shall:

(A) File written motions, responses, or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile;

(B) Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and

(C) Present witnesses and exhibits when necessary to protect the juvenile's best interest.

(4) An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and records of the Department of Human Services to the extent permitted by federal law.

(5)(A) An attorney ad litem shall represent the best interest of the juvenile.

(B) If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his or her determination of the juvenile's best interest.

(g)(1) The court may appoint a volunteer court-appointed special advocate from a program that shall meet all state and national court-appointed special advocate standards to advocate for the best interest of juveniles in dependency-neglect proceedings.

(2) No court-appointed special advocate shall be assigned a case before:

(A) Completing a training program in compliance with National Court Appointed Special Advocate Association and state standards; and

(B) Being approved by the local court-appointed special advocate program, which will include appropriate criminal background and child abuse registry checks.

(3) Each court-appointed special advocate shall:

(A)(i) Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony, or court reports.

(ii) The court-appointed special advocate may testify if called as a witness.

(iii) When the court-appointed special advocate prepares a written report for the court, the advocate shall provide all parties or the attorney of record with a copy of the written report seven (7) business days before the relevant hearing; and

(B) Monitor the case to which he or she is assigned to ensure compliance with the court's orders.

(4) Upon presentation of an order of appointment, a court-appointed special advocate shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and department records to the extent permitted by federal law.

(5) A court-appointed special advocate is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses.

(6) A court-appointed special advocate shall not be liable for damages for personal injury or property damage pursuant to the Arkansas Volunteer Immunity Act, § 16-6-101 et seq.

(7) Except as provided in this subsection, a court-appointed special advocate shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law.

(h)(1)(A) All parents and custodians have a right to counsel in all dependency-neglect proceedings.

(B) In all dependency-neglect proceedings that set out to remove legal custody from a parent or custodian, the parent or custodian from whom custody was removed shall have the right to be appointed counsel, and the court shall appoint counsel if the court makes a finding that the parent or custodian from whom custody was removed is indigent and counsel is requested by the parent or custodian.

(C) Parents and custodians shall be advised in the dependency-neglect petition or the ex parte emergency order, whichever is sooner, and at the first appearance before the court, of the right to counsel and the right to appointed counsel, if eligible.

(D) All parents shall have the right to be appointed counsel in termination of parental rights hearings, and the court shall appoint counsel if the court makes a finding that the parent is indigent and counsel is requested by the parent.

(2) If at the permanency planning hearing the court establishes the goal of adoption and counsel has not yet been appointed for a parent, the court shall appoint counsel in the permanency planning order to represent the parent as provided by subdivision (h)(1)(D) of this section.

(3) Putative parents do not have a right to appointed counsel in dependency-neglect proceedings, except for termination of parental rights proceedings, and only if:

(A) The court makes a finding on the record that the putative parent is indigent;

(B) The court finds that the putative parent has established significant contacts with the juvenile so that putative rights attach;

(C) Due process requires appointment of counsel for a full and fair hearing for the putative parent in the termination hearing; and

(D) The putative parent requested counsel.

(4) If at the permanency planning hearing the court establishes the goal of adoption, the court shall determine if the putative parent has established significant contacts with the juvenile in order for the putative parent's rights to attach and shall appoint counsel if eligible as provided in subdivision (h)(3) of this section.

(5)(A) The court shall order financially able parents or custodians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation after review by the court of an affidavit of financial means completed and verified by the parent or custodian and a determination by the court of an ability to pay.

(B)(i) All moneys collected by the clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the Juvenile Court Representation Fund.

(ii) The court may direct that money from this fund be used in providing counsel for indigent parents or custodians at the trial level in dependency-neglect proceedings.

(iii) Upon a determination of indigency and a finding by the court that the fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and state funds have been exhausted, the court may order the county to pay these reasonable fees and expenses until the state provides funding for counsel.

(6)(A) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(B) When the first appearance before the court is an emergency hearing to remove custody under § 9-27-315, parents shall be notified of the right to appointed counsel if indigent in the emergency ex parte order.

(7) The attorney for the parent or custodian shall be provided access to all records relevant to the juvenile's case, including without limitation school records, medical records, all court records relating to the juvenile and his or her family, and department records to which the parent or custodian is entitled under state and federal law.

History. Acts 1989, No. 273, § 15; 1997, No. 1227, § 4; 1999, No. 1192, § 14; 1999, No. 1340, § 13; 2001, No. 987, § 2; 2001, No. 1503, § 4; 2003, No. 1166, § 9; 2003, No. 1809, § 2; 2005, No. 1990, § 8; 2011, No. 1175, § 4; 2013, No. 761, § 2.

Amendments. The 2011 amendment rewrote (h).

The 2013 amendment inserted "from whom custody was removed" twice in (h)(1)(B).

CASE NOTES

Cited: B.H.1 v. Ark. HHS, 2012 Ark. App. 532, — S.W.3d — (2012).

9-27-318. Filing and transfer to the criminal division of circuit court.

CASE NOTES

Analysis

Constitutionality.
Burden of Proof.
Extended Juvenile Jurisdiction Hearing.
Factors Considered.
—Equal Weight.
Jurisdiction.
Procedure.
Transfer Denied.

Constitutionality.

This section, which vested prosecutors with the discretion to bring felony charges against 16-year-olds in the criminal divisions of circuit courts, was substantive

law and not a rule of pleading, practice, and procedure; therefore, it did not violate separation of powers under Ark. Const. Art. 4, §§ 1, 2. Also, subsection (c) of this section did not deny a juvenile equal protection of the law because treatment as a juvenile was not an inherent right and could be modified by the legislature. C.B. v. State, 2012 Ark. 220, — S.W.3d — (2012).

Burden of Proof.

Trial court did not err in denying a juvenile's request to transfer his case to the juvenile division under subsection (g) of this section based on the seriousness of the crimes; the aggressive, willful manner of the crimes; that the offenses were against persons; and the juvenile's sophisticated evasion of capture and non-cooperation. The trial court properly used the clear and convincing burden of proof from subdivision (h)(2) of this section in deciding the juvenile's request, not the preponderance of the evidence standard applicable under § 9-27-503(b). A.I. v. State, 2010 Ark. App. 83, — S.W.3d — (2010).

Extended Juvenile Jurisdiction Hearing.

Designation of the juvenile for extended juvenile jurisdiction (EJJ) was proper because his contention that the law-of-the-case doctrine barred the juvenile court from conducting an extended juvenile jurisdiction hearing and granting the state's motion for such a designation was rejected. In the criminal case, that court reached no decision and provided no direction to the criminal court with respect to EJJ designation and upon remand the criminal court made no decision regarding EJJ designation; nothing required the criminal court to make a decision on the EJJ issues before the case was transferred to juvenile court. N.D. v. State, 2012 Ark. 265, 383 S.W.3d 396 (2012).

Factors Considered.

Where appellant was charged with criminal attempted rape and sexual assault in the second degree arising out of acts committed when he was sixteen years of age, the trial court did not err by denying appellant's motion to transfer his criminal case to juvenile court. The age factor, the fact that rape was a serious allegation and a violent offense against a person, and appellant's prior history of sexual assault were sufficient factors under subsection (g) of this section to support the trial court's decision to retain jurisdiction. R.F.R. v. State, 2009 Ark. App. 583, 337 S.W.3d 547 (2009).

Where appellant was charged with criminal attempted rape and sexual assault in the second degree, the trial court denied his motion to transfer his criminal case to juvenile court without making written findings on all of the factors set forth in subsection (g) of this section. Because appellant never made the argument of noncompliance with the mandatory statutory provisions to the trial court or the appellate court, the argument was waived. R.F.R. v. State, 2009 Ark. App. 583, 337 S.W.3d 547 (2009).

In a case in which defendant was charged with residential burglary, criminal mischief in the first degree, and theft arising out of acts allegedly committed two days before his seventeenth birthday, and he appealed a trial court's denial of his motion to transfer his criminal case to juvenile court, he argued unsuccessfully that the trial court's ruling that he could not be properly rehabilitated was erroneous because there was no clear and convincing evidence to support that finding, in fact there was no evidence at all on that point. In its order, the trial court addressed its concerns that rehabilitation may not be appropriate due to defendant's age and the seriousness of the offense. D. A. S. v. State, 2010 Ark. App. 144, — S.W.3d — (2010).

In denying appellant's motion to transfer a terroristic act and criminal mischief case to the juvenile division, a trial court was not required to give equal weight to each of the factors in subsection (g) of this section; denial of the motion was proper because appellant's own testimony established that appellant went to a rival's home, and that appellant knew that guns were being taken. Neal v. State, 2010 Ark. App. 744, 379 S.W.3d 634 (2010).

Circuit court did not err in denying a juvenile's motion to transfer to the juvenile division under the factors in subsection (g) of this section. The juvenile had an extensive record, and he brutally ambushed and murdered a guard before escaping from a juvenile facility and carjacking a vehicle. C.B. v. State, 2012 Ark. 220, — S.W.3d — (2012).

—Equal Weight.

In a case in which defendant was charged with residential burglary, criminal mischief in the first degree, and theft arising out of acts allegedly committed two days before his seventeenth birthday, and he appealed a trial court's denial of his motion to transfer his criminal case to juvenile court, he argued unsuccessfully that the trial court did not properly weigh the factors because it should have given more weight to factor five with the fact that defendant had no prior criminal or juvenile history. The trial court specifically addressed the required factors in its decision denying defendant's motion to transfer; it was not required to give equal weight to each of the statutory factors, and it could use its discretion in deciding the weight to be afforded to each factor. D. A. S. v. State, 2010 Ark. App. 144, — S.W.3d — (2010).

Jurisdiction.

As the criminal division of the circuit court lost its exclusive jurisdiction over a juvenile's case when it transferred the case to the juvenile division pursuant to this section, the criminal division lacked authority to later set aside its transfer order, and that order was a nullity. C.H. v. State, 2010 Ark. 279, 365 S.W.3d 879 (2010).

Inmate was not entitled to habeas corpus relief because a trial court did not lack jurisdiction over a rape case; pursuant to subdivision (c)(1) of this section, the inmate could have been tried in an adult court because he was over the age of 16. Ashby v. State, 2012 Ark. 48, — S.W.3d — (2012).

Procedure.

In a hearing on motions to transfer a case to juvenile court under this section, to dismiss the case, and to declare the transfer statute unconstitutional, the circuit court abused its discretion by not excluding the testimony of two key witnesses because the state blatantly violated Ark. R. Crim. P. 17.1(a) by refusing to offer these witnesses' names until late in the afternoon before the hearing and, as a result, the defense did not have time to interview the two witnesses. Although the hearing was not a trial or an adjudication, the state's dilatory behavior nevertheless occurred at a pivotal point in the proceedings when the circuit court was deciding the critical issue of whether the juvenile would be tried as a juvenile or as an adult. N.D. v. State, 2011 Ark. 282, 383 S.W.3d 396 (2011), rehearing denied, — S.W.3d —, 2011 Ark. LEXIS 317 (Ark. July 27, 2011).

Transfer Denied.

Pursuant to subsection (g) of this section, the circuit court did not err in denying defendant juvenile's motion to transfer his case to the juvenile division of the circuit court where it made findings on each of the statutory factors; defendant had a prior juvenile offense and he was involved in serious crimes. R.A.S. v. State, 2009 Ark. App. 713, — S.W.3d — (2009).

Because a juvenile twice in less than a month invited 16-year-old girls into his truck, pulled over into isolated areas, and forced himself on the victims despite their protests, sexually assaulting one and raping the other, and because he understood that his conduct was wrong, and had no deficits in his family life that would excuse his conduct, pursuant to subsection (g) of this section, the juvenile's motions to transfer to juvenile court were properly denied. Lewis v. State, 2011 Ark. App. 691, — S.W.3d — (2011).

Trial court did not err in denying a juvenile's motion to transfer a case to juvenile court after the juvenile was charged with second-degree murder because the trial court complied with the mandate of subsection (g) of this section by considering all of the required factors and making findings for each; the victim received eight stab wounds that resulted in the victim's death. Cole v. State, 2012 Ark. App. 281, — S.W.3d — (2012).

Trial court committed no error in denying the juvenile's motion to transfer the case to juvenile court, because the trial court considered each of the statutory factors under subsection (g) of this section, and made written findings; the evidence demonstrated that the juvenile had been offered the services of the juvenile system as a result of his commission of previous offenses, but rather than comply with the juvenile court's rules he persisted in delinquent behavior, and the present allegations (four counts of aggravated robbery, four counts of theft of property, one count of theft by receiving, and one count of aggravated assault) involved serious,

violent and premeditated conduct that raised legitimate concerns relating to the protection of society. D.D.R. v. State, 2012 Ark. App. 329, — S.W.3d — (2012).

Denial of a request to transfer a first-degree murder and terrorist acts case to juvenile court under subsection (g) of this section was proper because a juvenile had not taken advantage of opportunities given to her, she was charged with very serious offenses, she was involved in the planning of the offenses, and she was involved in gang activity. Because the transfer was denied, any arguments relating to extended-juvenile-jurisdiction were not applicable. M.R.W. v. State, 2012 Ark. App. 591, — S.W.3d —, 2012 Ark. App. LEXIS 707 (Oct. 24, 2012).

Cited: C.L. v. State, 2012 Ark. App. 374, — S.W.3d — (2012).

9-27-323. Diversion — Conditions — Agreement — Completion.

(a) If the prosecuting attorney, after consultation with the intake officer, determines that a diversion of a delinquency case is in the best interests of the juvenile and the community, the officer with the consent of the juvenile and his or her parent, guardian, or custodian may attempt to make a satisfactory diversion of a case.

(b) If the intake officer determines that a diversion of a family in need of services case is in the best interest of the juvenile and the community, the officer with the consent of the petitioner, juvenile, and his or her parent, guardian, or custodian may attempt to make a satisfactory diversion of a case.

(c) In addition to the requirements of subsections (a) and (b) of this section, a diversion of a case is subject to the following conditions:

(1) The juvenile has admitted his or her involvement in:

(A) A delinquent act for a delinquency diversion; or

(B) A family in need of services act for a family in need of services diversion;

(2) The intake officer advises the juvenile and his or her parent, guardian, or custodian that they have the right to refuse a diversion of the case and demand the filing of a petition and a formal adjudication;

(3) Any diversion agreement shall be entered into voluntarily and intelligently by the juvenile with the advice of his or her attorney or by the juvenile with the consent of a parent, guardian, or custodian if the juvenile is not represented by counsel;

(4) The diversion agreement shall provide for the supervision of a juvenile or the referral of the juvenile to a public or private agency for services not to exceed six (6) months;

(5) All other terms of a diversion agreement shall not exceed nine (9) months;

(6) The juvenile and his or her parent, guardian, or custodian shall have the right to terminate the diversion agreement at any time and to request the filing of a petition and a formal adjudication.

(d)(1) The terms of the diversion agreement shall:

(A) Be in writing in simple, ordinary, and understandable language;

(B) State that the agreement was entered into voluntarily by the juvenile;

(C) Name the attorney or other person who advised the juvenile upon the juvenile's entering into the agreement; and

(D) Be signed by all parties to the agreement and by the prosecuting attorney if it is a delinquency case and the offense would constitute a felony if committed by an adult or a family in need of services case, pursuant to § 6-18-222.

(2) A copy of the diversion agreement shall be given to the juvenile, the counsel for the juvenile, the parent, guardian, or custodian, and the intake officer, who shall retain the copy in the case file.

(e) Diversion agreements shall be limited to providing for:

(1) Nonjudicial probation under the supervision of the intake officer or probation officer for a period during which the juvenile may be required to comply with specified conditions concerning his or her conduct and activities;

(2) Participation in a court-approved program of education, counseling, or treatment;

(3) Participation in a court-approved teen court;

(4) Participation in a juvenile drug court program; and

(5) Enrollment in the Regional Educational Career Alternative School.

(f)(1) If a diversion of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period for which the agreement was entered into.

(2) If a petition is filed within this period, the juvenile's compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

(g) The diversion agreement may be terminated, and the prosecuting attorney in a delinquency case or the petitioner in a family in need of services case may file a petition if at any time during the agreement period:

(1) The juvenile or his or her parent, guardian, or custodian declines to further participate in the diversion process;

(2) The juvenile fails, without reasonable excuse, to attend a scheduled conference;

(3) The juvenile appears unable or unwilling to benefit from the diversion process; or

(4) The intake officer becomes apprised of new or additional information that indicates that further efforts at diversion would not be in the best interests of the juvenile or society.

(h) Upon the satisfactory completion of the diversion period:

(1) The juvenile shall be dismissed without further proceedings;

(2) The intake officer shall furnish written notice of the dismissal to the juvenile and his or her parent, guardian, or custodian; and

(3) The complaint and the agreement, and all references thereto, may be expunged by the court from the juvenile's file.

(i)(1) A juvenile intake or probation officer may charge a diversion fee only after review of an affidavit of financial means and a determination of the juvenile's or the juvenile's parent's, guardian's, or custodian's ability to pay the fee.

(2) The diversion fee shall not exceed twenty dollars ($20.00) per month to the juvenile division of circuit court.

(3) The court may direct that the fees be collected by the juvenile officer, sheriff, or court clerk for the county in which the fees are charged.

(4) The officer designated by the court to collect diversion fees shall maintain receipts and account for all incoming fees and shall deposit the fees at least weekly into the county treasury of the county where the fees are collected and in which diversion services are provided.

(5) The diversion fees shall be deposited into the account with the juvenile service fees under § 16-13-326.

(j)(1) In judicial districts having more than one (1) county, the judge may designate the treasurer of one (1) of the counties in the district as the depository of all juvenile fees collected in the district.

(2) The treasurer so designated by the court shall maintain a separate account of the juvenile fees collected and expended in each county in the district.

(3) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

(4) The funds derived from the collection of diversion fees shall be used by agreement of the judge or judges of the circuit court designated to hear juvenile cases in their district plan pursuant to Supreme Court Administrative Order Number 14, originally issued April 6, 2001, and the quorum court of the county to provide services and supplies to juveniles at the discretion of the juvenile division of circuit court.

(k)(1) The Department of Human Services shall develop a statewide referral protocol for helping to coordinate the delivery of services to sexually exploited children.

(2) As used in this section, "sexually exploited child" means a person less than eighteen (18) years of age who has been subject to sexual exploitation because the person:

(A) Is a victim of trafficking of persons under § 5-18-103;

(B) Is a victim of child sex trafficking under 18 U.S.C. § 1591, as it existed on January 1, 2013; or

(C) Engages in an act of prostitution under § 5-70-102 or sexual solicitation under § 5-70-103.

History. Acts 1989, No. 273, § 22; 1995, No. 1003, § 1; 1997, No. 1118, § 1; 2003, No. 1809, § 4; 2007, No. 1022, § 1; 2011, No. 1202, § 2; 2013, No. 1257, § 7.

A.C.R.C. Notes. Acts 2013, No. 1257, § 1, provided: "Legislative findings.

"The General Assembly finds that:

"(1) The criminal justice system is not the appropriate place for sexually exploited children because it serves to retraumatize them and to increase their feelings of low self-esteem;

"(2) Both federal and international law recognize that sexually exploited children are the victims of crime and should be treated as such;

"(3) Sexually exploited children should, when possible, be diverted into services that address the needs of these children outside of the justice system; and

"(4) Sexually exploited children deserve the protection of child welfare services, including diversion, crisis intervention, counseling, and emergency housing services."

Acts 2013, No. 1257, § 2, provided: "Legislative intent.

"(1) The intent of this act is to protect a child from further victimization after the child is discovered to be a sexually exploited child by ensuring that a child protective response is in place in the state.

"(2) This is to be accomplished by presuming that any child engaged in prostitution or solicitation is a victim of sex trafficking and providing these children with the appropriate care and services when possible.

"(3) In determining the need for and capacity of services that may be provided, the Department of Human Services shall recognize that sexually exploited children have separate and distinct service needs according to gender, and every effort should be made to ensure that these children are not prosecuted or treated as juvenile delinquents, but instead are given the appropriate social services."

Amendments. The 2011 amendment inserted (e)(5).

The 2013 amendment added (k).

9-27-325. Hearings — Generally.

(a)(1)(A) All hearings shall be conducted by the judge without a jury, except as provided by the Extended Juvenile Jurisdiction Act, § 9-27-501 et seq.

(B) If a juvenile is designated an extended juvenile jurisdiction offender, the juvenile shall have a right to a jury trial at the adjudication.

(2) The juvenile shall be advised of the right to a jury trial by the court following a determination that the juvenile will be tried as an extended juvenile jurisdiction offender.

(3) The right to a jury trial may be waived by a juvenile only after being advised of his or her rights and after consultation with the juvenile's attorney.

(4) The waiver shall be in writing and signed by the juvenile and the juvenile's attorney.

(b)(1) The defendant need not file a written responsive pleading in order to be heard by the court.

(2) In dependency-neglect proceedings, if not appointed by the court in an order provided to all parties, counsel shall file a notice of appearance immediately upon acceptance of representation, with a copy to be served on the petitioner and all parties.

(c)(1) At the time set for hearing, the court may:

(A) Proceed to hear the case only if the juvenile is present or excused for good cause by the court; or

(B) Continue the case upon determination that the presence of an adult defendant is necessary.

(2) Upon determining that a necessary party is not present before the court, the court may:

(A) Issue an order for contempt if the juvenile was served with an order to appear; or

(B) Issue an order to appear, with a time and place set by the court for hearing, if the juvenile was served with a notice of hearing.

(d)(1) The court shall be a court of record.

(2) A record of all proceedings shall be kept in the same manner as other proceedings of circuit court and in accordance with rules promulgated by the Supreme Court.

(e)(1) Unless otherwise indicated, the Arkansas Rules of Evidence shall apply.

(2)(A) Upon motion of any party, the court may order that the father, mother, and child submit to scientific testing for drug or alcohol abuse.

(B) A written report of the test results prepared by the person conducting the test, or by a person under whose supervision or direction the test and analysis have been performed, certified by an affidavit subscribed and sworn to by him or her before a notary public, may be introduced in evidence without calling the person as a witness unless a motion challenging the test procedures or results has been filed within thirty (30) days before the hearing and bond is posted in an amount sufficient to cover the costs of the person's appearance to testify.

(C)(i) If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one (1) person's witnessing the procedure or extraction, packaging, and mailing of the samples and by one (1) person's signing for the samples at the place where the samples are subject to the testing procedure.

(ii) Submission of the affidavits along with the submission of the test results shall be competent evidence to establish the chain of custody of those specimens.

(D) Whenever a court orders scientific testing for drug or alcohol abuse and one (1) of the parties refuses to submit to the testing, that refusal shall be disclosed at trial and may be considered civil contempt of court.

(f) Except as otherwise provided in this subchapter, the Arkansas Rules of Civil Procedure shall apply to all proceedings and the Arkansas Rules of Criminal Procedure shall apply to delinquency proceedings.

(g) All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Criminal Procedure.

(h)(1) The petitioner in all proceedings shall bear the burden of presenting the case at hearings.

(2) The following burdens of proof shall apply:

(A) Proof beyond a reasonable doubt in delinquency hearings;

(B) Proof by a preponderance of the evidence in dependency-neglect proceedings, except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., family in need of services, and probation revocation hearings; and

(C) Proof by clear and convincing evidence for hearings to terminate parental rights, except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., transfer hearings, and in hearings to determine whether or not reunification services shall be provided;

(3) If the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., applies, the following burdens of proof shall apply:

(A) Clear and convincing evidence in probable cause, adjudication, review, and permanency planning hearings; and

(B) Beyond a reasonable doubt in termination of parental rights hearings that are subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.

(i)(1) All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed.

(2) All other hearings may be closed within the discretion of the court, except that in delinquency cases the juvenile shall have the right to an open hearing, and in adoption cases the hearings shall be closed as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.

(j) Except as provided in § 9-27-502, in any juvenile delinquency proceeding in which the juvenile's fitness to proceed is put in issue by any party or the court, the provisions of § 5-2-301 et seq. shall apply.

(k) In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court.

(l)(1) The Department of Human Services shall provide to foster parents and preadoptive parents of a child in department custody notice of any proceeding to be held with respect to the child.

(2) Relative caregivers shall be provided notice by the original petitioner in the juvenile matter.

(3)(A) The court shall allow foster parents, preadoptive parents, and relative caregivers an opportunity to be heard in any proceeding held with respect to a child in their care.

(B) Foster parents, adoptive parents, and relative caregivers shall not be made parties to the proceeding solely on the basis that the persons are entitled to notice and the opportunity to be heard.

(C) Foster parents, preadoptive parents, and relative caregivers shall have the right to be heard in any proceeding.

(m)(1)(A) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or younger when:

(i) The grandchild resides with this grandparent for at least six (6) continuous months prior to his or her first birthday;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated; and

(iv) Notice to a grandparent under subdivision (m)(1)(A) of this section shall be given by the department; and

(B) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or older when:

(i) The grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(2) For purposes of this subsection, "grandparent" does not mean a parent of a putative father of a child.

(n) [Repealed.]

History. Acts 1989, No. 273, § 24; 1993, No. 758, § 5; 1995, No. 533, § 6; 1997, No. 1118, § 2; 1999, No. 401, § 5; 1999, No. 1192, § 17; 2001, No. 987, § 3; 2001, No. 1497, § 2; 2001, No. 1503, § 5; 2003, No. 1166, § 14; 2003, No. 1319, § 12; 2007, No. 587, § 12; 2009, No. 1311, § 1; 2011, No. 591, § 6; 2011, No. 1175, § 5; 2013, No. 1055, § 9.

Amendments. The 2011 amendment by No. 591 repealed (n).

The 2011 amendment by No. 1175 inserted "proceedings, except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq." in (h)(2)(B); inserted "except if subject to the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq.," in (h)(2)(C); and inserted (h)(3).

The 2013 amendment, in (b)(2), substituted "if not appointed by the court in an order provided to all parties" for "retained" and added "and all parties" at the end.

CASE NOTES

Analysis

Burden of Proof.
Evidence.
Parties.

Burden of Proof.

On appeal of a permanent child custody order in a dependency proceeding, the father counsel's erred by assuming the burden of proof was clear and convincing evidence. That heightened burden only applied if the father's parental rights were being terminated under subdivisions (h)(2)(B) and (C) of this section. Collier v. Ark. Dep't of Human Servs., 2009 Ark. App. 565, — S.W.3d — (2009).

Circuit court's adjudication of children as dependent-neglected after they were removed from a ministry compound was supported by a preponderance of the evidence because the evidence established a clear picture of the danger to children in the ministry compound where there was testimony that many children were beaten, denied, and imprisoned in a warehouse for eight months; there was further evidence that the ministry leader molested girls and "married" several young girls and that it was normal for underage girls to be married to much older men. In spite of evidence demonstrating that sexual abuse of underage girls, beatings, and fasts were widely known within the ministry, the father denied knowing of any potential danger to his children; as such, the evidence sufficiently demonstrated that the environment in which the father placed his children was dangerous. Broderick v. Ark. Dep't of Human Servs., 2009 Ark. App. 771, 358 S.W.3d 909 (2009).

Trial court properly found that the Arkansas Department of Health and Human Services had proven by a preponderance of the evidence that the child of a mother and a father was dependent-neglected under § 9-27-303(18)(A) due to the condition of the house in which he lived as there were numerous things that the caseworker observed in the house that could harm the child, including open containers of chemicals, knives and guns within his reach, broken glass on the floor, and various unsanitary conditions. Duvall v. Ark. Dep't of Human Servs., 2011 Ark. App. 261, 378 S.W.3d 873 (2011).

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. Johnson v. Ark. Dep't of Human Servs., 2012 Ark. App. 244, — S.W.3d — (2012).

Preponderance of the evidence supported the trial court's decision adjudicating appellant's children dependent-neglected under § 9-27-303(18)(A)(v)-(vi) and subdivision (h)(2)(B) of this section because they were in her care the day she

was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Appellant's conduct placed the children at risk of substantial harm. Gaer v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 516, — S.W.3d — (2012).

Evidence.

Where appellant allowed his daughter to live in the residence of a ministry with a man who was accused of perpetrating physical and sexual abuse against children, appellant's failure to protect his daughter from potential harm was more than enough to warrant her being found dependent-neglected in accordance with subdivision (h)(2)(B) of this section. The evidence also showed that appellant's daughter was not properly immunized, was diagnosed with child maltreatment syndrome-sexual and adjustment disorder with anxiety, and mental health therapy was recommended; there was sufficient evidence to declare her dependent-neglected. Seago v. Ark. Dep't of Human Servs., 2009 Ark. App. 767, 360 S.W.3d 733 (2009).

Adjudication order finding that the father's two children were dependent-neglected was affirmed because direct proof of sexual gratification was not necessary in that such a purpose could be inferred from the circumstances; the son stated that the father touched him inappropriately on his genitals and buttocks in a manner that made him feel uncomfortable. Ashcroft v. Ark. Dep't of Human Servs., 2010 Ark. App. 244, 374 S.W.3d 743 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 225 (Apr. 22, 2010).

In a case in which a mother appealed a circuit court's order adjudicating her daughter dependent-neglected, the crux of the mother's argument was that her mere suspicion of sexual abuse did not give rise to the statutory requirement for neglect that she knew or had reasonable cause to know of the sexual abuse by her daughter's stepfather; however, the circuit court found that she had suspicions that the abuse was occurring and not only failed to prevent it, but actually facilitated the abuse by leaving her daughter home alone with the stepfather. While the mother was not the person who sexually abused her daughter, the fact remained that her daughter was found to be at substantial risk of serious harm as a result of sexual abuse; thus her daughter was dependent-neglected. Lipscomb v. Ark. Dep't of Human Servs., 2010 Ark. App. 257, — S.W.3d — (2010).

Trial court's finding that a mother's children were dependent-neglected pursuant to § 9-27-303(18)(A) was not clearly against the preponderance of the evidence and the trial court did not abuse its discretion in affording greater weight to the opinion a forensic psychologist, who conducted a psychological examination of the mother, than on a social worker's opinion because the mother's history of chaotic relationships and living situations soundly supported the psychologist's prognosis that the mother's chances of achieving stability were poor; at the time the Arkansas Department of Human Services (DHS) took the children into custody, they were living with their maternal grandmother because the mother wanted to avoid having DHS take them into custody, the mother and her methamphetamine-addicted husband had lived with a family friend for over a year, during which time the friend had molested one of her children, and the mother failed a drug test and did not have a job. McCann v. Ark. Dep't of Human Servs., 2010 Ark. App. 828, — S.W.3d — (2010).

Sufficient evidence for purposes of subdivision (h)(2)(B) of this section supported the trial court's determination that appellant's children were dependent-neglected based on an allegation of abuse by choking, because appellant's daughter testified that her father held her down on a bed, placed his hands around her neck, and choked her; she was not able to breathe. Her brother confirmed that the choking took place and his father ordered him to restrain her legs during the incident; a family-service worker also testified that appellant admitted to her that the incident occurred. Lynch v. Ark. Dep't of Human Servs., 2012 Ark. App. 149, — S.W.3d — (2012).

The order adjudicating appellant's daughter dependent-neglected was affirmed because the daughter had been involved in a fight with a male and had suffered a head injury, which required medical attention, and the daughter showed up at a hearing in juvenile court without a parent or guardian present.

Lowe v. Ark. Dep't of Human Servs., 2012 Ark. App. 155, — S.W.3d — (2012).

Finding that the adopted daughter was dependent-neglected as a result of sexual abuse by the father was not clearly erroneous, because the daughter testified that her father first touched her inappropriately when she was eleven years old, the daughter testified that the abuse hurt and that she would try to pull away, and the court expressly found the testimonies of the daughter and the certified sexual-assault examiner to be both credible and consistent with each other. Wells v. Ark. Dep't of Human Servs., 2012 Ark. App. 176, — S.W.3d — (2012).

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

Order in which the child was adjudicated dependent-neglected was affirmed because there was a true prior finding by investigators that appellant and the paternal grandfather subjected the child to extreme and repeated cruelty; appellant and the paternal grandfather would record inappropriate interviews with the child that were emotionally traumatizing. Stoliker v. Ark. Dep't of Human Servs., 2012 Ark. App. 415, — S.W.3d — (2012).

Trial court did not err in awarding permanent custody of appellant's child to the child's father under subdivision (h)(2)(B) of this section because although appellant had fully complied at times with the case plan and had the child returned to her custody, she was still not capable of caring for her and acting in her best interest, according to the evidence presented. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was without merit. Harris v. Ark. Dep't of Human Servs., 2012 Ark. App. 427, — S.W.3d — (2012).

Award of permanent custody of the child to his maternal grandfather and his wife was affirmed because evidence was presented that appellant had not completed the domestic-violence classes as directed and appellant admitted that she showed poor judgment in having a relationship with her boyfriend and that she was also slow in returning paperwork to the Arkansas Department of Human Service to complete a background check before the fifteen-month review hearing. Penn v. Ark. Dep't of Human Servs. & Minor Child, 2013 Ark. App. 327, — S.W.3d — (2013).

Parties.

Circuit court erred in holding that the foster parents had no right to adopt and therefore no right to intervene in an adoption proceeding involving their foster child under Ark. R. Civ. P. 24. Subdivision (l)(3)(B) of this section contemplated that foster parents seeking to adopt a child might become parties to the dependency-neglect proceeding. Schubert v. Ark. Dep't of Human Servs., 2010 Ark. App. 113, — S.W.3d — (2010).

Cited: Tadlock v. Ark. Dep't of Human Servs., 2009 Ark. App. 841, 372 S.W.3d 403 (2009); Jackson v. Ark. Dep't of Human Servs., 2010 Ark. App. 246, 374 S.W.3d 198 (2010); Thorne v. Ark. Dep't of Human Servs., 2010 Ark. App. 317, — S.W.3d — (2010); Maynard v. Ark. Dep't of Human Servs., 2011 Ark. App. 82, 389 S.W.3d 627 (2011); Chambers v. Ark. Dep't of Human Servs., 2011 Ark. App. 91, — S.W.3d — (2011).

9-27-327. Adjudication hearing.

(a)(1) An adjudication hearing shall be held to determine whether the allegations in a petition are substantiated by the proof.

(2) The dependency-neglect adjudication hearing shall be held within thirty (30) days after the probable cause hearing under § 9-27-

315. On a motion of the court or any party, the court may continue the adjudication hearing up to:

(A) Sixty (60) days after the probable cause hearing for good cause shown; and

(B) Ninety (90) days after the probable cause hearing if finding that necessary and relevant evidence cannot be obtained in a timely manner.

(3) If the juvenile has previously been adjudicated a dependent-neglected juvenile in the same case in which a motion for a change of custody has been filed to remove the juvenile from the custody of a parent, a subsequent adjudication is required if the ground for the removal is not the same as the ground previously adjudicated.

(b) If a juvenile is in detention, an adjudication hearing shall be held, unless the juvenile or a party is seeking an extended juvenile jurisdiction designation, not later than fourteen (14) days from the date of the detention hearing unless waived by the juvenile or good cause is shown for a continuance.

(c) In extended juvenile jurisdiction offender proceedings, the adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

(d) Following an adjudication in which a juvenile is found to be delinquent, dependent-neglected, or a member of a family in need of services, the court may order any studies, evaluations, or predisposition reports, if needed, that bear on disposition.

(e)(1) All such reports shall be provided in writing to all parties and counsel at least two (2) days prior to the disposition hearing.

(2) All parties shall be given a fair opportunity to controvert any parts of such reports.

(f) In dependency-neglect cases, a written adjudication order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

History. Acts 1989, No. 273, § 26; 1997, No. 1227, § 5; 1999, No. 401, § 6; 1999, No. 1192, § 18; 2001, No. 1503, § 6; 2003, No. 1319, §§ 14, 15; 2007, No. 587, § 14; 2009, No. 956, § 10; 2011, No. 792, § 9; 2013, No. 1055, § 19.

Amendments. The 2011 amendment rewrote (a)(2).

The 2013 amendment added (a)(3).

CASE NOTES

Analysis

Burden of Proof.
Evidence.

Burden of Proof.

Circuit court's adjudication of children as dependent-neglected after they were removed from a ministry compound was supported by a preponderance of the evidence because the evidence established a clear picture of the danger to children in the ministry compound where there was testimony that many children were beaten, denied, and imprisoned in a warehouse for eight months; there was further evidence that the ministry leader molested girls and "married" several young

girls and that it was normal for underage girls to be married to much older men. In spite of evidence demonstrating that sexual abuse of underage girls, beatings, and fasts were widely known within the ministry, the father denied knowing of any potential danger to his children; as such, the evidence sufficiently demonstrated that the environment in which the father placed his children was dangerous. Broderick v. Ark. Dep't of Human Servs., 2009 Ark. App. 771, 358 S.W.3d 909 (2009).

Trial court properly found that the Arkansas Department of Health and Human Services had proven by a preponderance of the evidence that the child of a mother and a father was dependent-neglected under § 9-27-303(18)(A) due to the condition of the house in which he lived as there were numerous things that the caseworker observed in the house that could harm the child, including open containers of chemicals, knives and guns within his reach, broken glass on the floor, and various unsanitary conditions. Duvall v. Ark. Dep't of Human Servs., 2011 Ark. App. 261, 378 S.W.3d 873 (2011).

Court erred in adjudicating the children as dependent-neglected, because the Arkansas Department of Human Services failed to provide sufficient proof that the spankings were anything other than moderate or reasonable, and did not result in other than transient pain, and one incident that did not result in injury should not give rise to the removal of the children from the home. Johnson v. Ark. Dep't of Human Servs., 2012 Ark. App. 244, — S.W.3d — (2012).

Preponderance of the evidence supported the trial court's decision adjudicating appellant's children dependent-neglected because they were in her care the day she was arrested for possession of drug paraphernalia and tested positive for methamphetamine. Because appellant's boys were in her apartment alone while she was in another apartment using drugs, the facts supported the allegation under subdivision (a)(1) of this section that appellant's conduct constituted neglect and placed her children at risk of substantial harm. Gaer v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 516, — S.W.3d — (2012).

Evidence.

Where appellant allowed his daughter to live in the residence of a ministry with a man who was accused of perpetrating physical and sexual abuse against children, appellant's failure to protect his daughter from potential harm was more than enough to warrant her being found dependent-neglected in accordance with subdivision (a)(1)(A) of this section. The evidence also showed that appellant's daughter was not properly immunized, was diagnosed with child maltreatment syndrome-sexual and adjustment disorder with anxiety, and mental health therapy was recommended; there was sufficient evidence to declare her dependent-neglected. Seago v. Ark. Dep't of Human Servs., 2009 Ark. App. 767, 360 S.W.3d 733 (2009).

Adjudication order finding that the father's two children were dependent-neglected was affirmed because direct proof of sexual gratification was not necessary in that such a purpose could be inferred from the circumstances; the son stated that the father touched him inappropriately on his genitals and buttocks in a manner that made him feel uncomfortable. Ashcroft v. Ark. Dep't of Human Servs., 2010 Ark. App. 244, 374 S.W.3d 743 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 225 (Apr. 22, 2010).

Minor children removed from a ministry compound were properly adjudicated dependent-neglected under this section where their father was aware of a pattern and practice of severe physical beatings, failed to protect them against physical abuse, and endorsed and facilitated illegal marriages of underage females to adults in the compound. Thorne v. Ark. Dep't of Human Servs., 2010 Ark. App. 443, 374 S.W.3d 912 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 372 (June 24, 2010), overruled in part, Myers v. Ark. Dep't of Human Servs., 2011 Ark. 182, 380 S.W.3d 906 (2011).

Trial court's finding that a mother's children were dependent-neglected pursuant to § 9-27-303(18)(A) was not clearly against the preponderance of the evidence and the trial court did not abuse its discretion in affording greater weight to the opinion a forensic psychologist, who conducted a psychological examination of the mother, than on a social worker's opinion because the mother's history of chaotic relationships and living situations soundly supported the psychologist's prog-

nosis that the mother's chances of achieving stability were poor; at the time the Arkansas Department of Human Services (DHS) took the children into custody, they were living with their maternal grandmother because the mother wanted to avoid having DHS take them into custody, the mother and her methamphetamine-addicted husband had lived with a family friend for over a year, during which time the friend had molested one of her children, and the mother failed a drug test and did not have a job. McCann v. Ark. Dep't of Human Servs., 2010 Ark. App. 828, — S.W.3d — (2010).

In termination proceedings, when a circuit court found the allegations against a mother in a petition by the Department of Human Services were substantiated by the proof, in accordance with subdivision (a)(1) of this section, but because the mother did not appeal from the adjudication order, even though she could have done so under Ark. Sup. Ct. & Ct. App. R. 6-9(a)(1)(A), the circuit court's findings in the order were no longer open to challenge by the mother and precluded from review. Porter v. Ark. Dep't of Human Servs., 2011 Ark. App. 342, — S.W.3d — (2011).

Sufficient evidence supported the trial court's determination that appellant's children were dependent-neglected for purposes of subdivision (a)(1) of this section based on an allegation of abuse by choking, because appellant's daughter testified that her father held her down on a bed, placed his hands around her neck, and choked her; she was not able to breathe. Her brother confirmed that the choking took place and his father ordered him to restrain her legs during the incident; a family-service worker also testified that appellant admitted to her that the incident occurred. Lynch v. Ark. Dep't of Human Servs., 2012 Ark. App. 149, — S.W.3d — (2012).

The order adjudicating appellant's daughter dependent-neglected was affirmed because the daughter had been involved in a fight with a male and had suffered a head injury, which required medical attention, and the daughter showed up at a hearing in juvenile court without a parent or guardian present. Lowe v. Ark. Dep't of Human Servs., 2012 Ark. App. 155, — S.W.3d — (2012).

9-27-328. Removal of juvenile.

(a) Before a circuit court may order any dependent-neglected juvenile or family in need of services juvenile removed from the custody of his or her parent, guardian, or custodian and placed with the Department of Human Services or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall order family services appropriate to prevent removal unless the health and safety of the juvenile warrant immediate removal for the protection of the juvenile.

(b) When the court orders a dependent-neglected or family in need of services juvenile removed from the custody of a parent, guardian, or custodian and placed in the custody of the department or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall make these specific findings in the order:

(1) In the initial order of removal, the court must find:

(A) Whether it is contrary to the welfare of the juvenile to remain at home;

(B) Whether the removal and the reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile; and

(C) Whether the removal is in the best interest of the juvenile; and

(2) Within sixty (60) days of removal, the court must find:

(A) Which family services were made available to the family before the removal of the juvenile;

(B) What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile, taking into consideration whether or not the juvenile could safely remain at home while family services were provided;

(C) Why efforts made to provide the family services described did not prevent the removal of the juvenile; and

(D) Whether efforts made to prevent the removal of the juvenile were reasonable, based upon the needs of the family and the juvenile.

(c) When the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services being provided, the responsible state agency shall be deemed to have made reasonable efforts to prevent or eliminate the need for removal.

(d) When the court finds that the department's preventive or reunification efforts have not been reasonable, but further preventive or reunification efforts could not permit the juvenile to remain safely at home, the court may authorize or continue the removal of the juvenile but shall note the failure by the department in the record of the case.

(e)(1) In all instances of removal of a juvenile from the home of his or her parent, guardian, or custodian by a court, the court shall set forth in a written order:

(A) The evidence supporting the decision to remove;

(B) The facts regarding the need for removal; and

(C) The findings required by this section.

(2) The written findings and order shall be filed by the court or by a party or party's attorney as designated by the court within thirty (30) days of the date of the hearing at which removal is ordered or prior to the next hearing, whichever is sooner.

(f) Within one (1) year from the date of removal of the juvenile and annually thereafter, the court shall determine whether the department has made reasonable efforts to obtain permanency for the juvenile.

(g)(1) If the court transfers custody of a child to the department, the court shall issue an order containing the following determinations regarding the educational issues of the child and whether the parent or guardian of the child may:

(A) Have access to the child's school records;

(B) Obtain information on the current placement of the child, including the name and address of the child's foster parent or provider, if the parent or guardian has access to the child's school records; and

(C) Participate in school conferences or similar activities at the child's school.

(2) If the court transfers custody of a child to the department, the court may appoint an individual to consent to an initial evaluation of the child and serve as the child's surrogate parent under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as it existed on February 1, 2007.

History. Acts 1989, No. 273, § 27; 1995, No. 533, § 8; 1995, No. 1337, §§ 3, 4; 1997, No. 1227, § 6; 1999, No. 401, § 7; 1999, No. 1340, § 14; 2001, No. 1503, § 7; 2003, No. 1166, § 15; 2003, No. 1319, § 16; 2007, No. 587, § 15; 2013, No. 1055, § 10.

Amendments. The 2013 amendment added (g).

CASE NOTES

Dependent-Neglected.

Children were improperly removed from a father's care under § 9-27-303(18)(A) and determined to be dependent-neglected because the evidence did not support a finding of inadequate supervision based on the father's lost knife, and the evidence did not clearly establish that the father cut a child with a knife. Moreover, there was no indication that the father's hitting a child on the face or head with his hand was knowing and intentional or whether it occurred on more than one occasion. Figueroa v. Ark. Dep't of Human Servs., 2013 Ark. App. 83, — S.W.3d — (2013).

9-27-329. Disposition hearing.

CASE NOTES

Notice.

Trial court erred in sua sponte ordering that the Department of Human Services not pursue reunification of a child and her mother without giving at least 14 days' notice that reunification would not be considered, as required by this section. Hardy v. Ark. Dep't of Human Servs., 2009 Ark. App. 751, 351 S.W.3d 182 (2009).

9-27-330. Disposition — Delinquency — Alternatives.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Constitutional Issues. 37 A.L.R.6th 55.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Procedural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

9-27-332. Disposition — Family in need of services — Generally.

CASE NOTES

School Uniforms.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them

and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

9-27-333. Disposition — Family in need of services — Limitations.

(a) At least five (5) working days before ordering the Department of Human Services, excluding community-based providers, to provide or pay for family services, the circuit court shall fax a written notice of intent to the Director of the Department of Human Services and to the attorney of the local office of chief counsel of the Department of Human Services.

(b) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(c) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

(d)(1) For purposes of this section, the court shall not specify a particular provider for placement or family services when the department is the payor or provider.

(2)(A) The court may order a child to remain in a placement if the court finds the placement is in the best interest of the child after hearing evidence from all parties.

(B) A court may also order a child to be placed into a licensed or approved placement after a hearing where the court makes a finding that it is in the best interest of the child based on bona fide consideration of evidence and recommendations from all the parties.

(e)(1) In all cases in which family services are ordered, the court shall determine a parent's, guardian's, or custodian's ability to pay, in whole or in part, for these services.

(2) This determination and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or part, for the services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian can pay for the family services ordered and ordering the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(4) For purposes of this subsection:

(A) "Parent, guardian, and custodian" means the individual or individuals from whom custody was removed; and

(B) "Periodically" means no more than one (1) time per month.

(5) In making its determination, the court shall consider the following factors:

(A) The financial ability of the parent, both parents, the guardian, or the custodian to pay for the services;

(B) The past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and

(C) Any other factors the court deems relevant.

(f) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed social worker who is approved to do home studies and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(g) Custody of a juvenile shall not be transferred to the department if a delinquency petition or case is converted to a family in need of services petition or case.

(h) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services of the Department of Human Services.

(i) For purposes of this section, the court shall not order the department to expend or forward social security benefits for which the department is payee.

History. Acts 1989, No. 273, § 32; 1997, No. 1227, § 9; 2003, No. 1319, § 27; 2003, No. 1809, § 10; 2005, No. 1990, §§ 13, 14; 2007, No. 587, § 18; 2009, No. 956, § 14; 2011, No. 1175, § 6.

Amendments. The 2011 amendment added (d)(2).

CASE NOTES

School Uniforms.

Order for the Arkansas Department of Human Services to provide a pregnant teenager with school uniforms and maternity clothes was clearly erroneous because the lack of such did not pose an immediate danger to the teenager's health or physical well-being under § 12-18-1001(a); there was a lack of evidence to support the finding that the teenager was at immediate risk of severe maltreatment and that family services were necessary to prevent her removal, the failure to make findings necessitated reversal, and the trial court's personal recollections were not sufficient. In addition, even if the teenager lacked school uniforms and maternity clothes because her family could not afford them and was kept out of school as a result, this did not constitute neglect that warranted removal from the home. Ark. Dep't of Human Servs. v. A.M., 2012 Ark. App. 240, — S.W.3d — (2012).

9-27-334. Disposition — Dependent-neglected — Generally.

CASE NOTES

Change of Custody.

Court properly changed child custody pursuant to this section because establishment of a regular routine and rules was important for the child because the child had a substantial mood instability and had been adversely affected by the chaos in the mother's home, and the father was a good neighbor, kind-hearted, and passionate about the father's family. Keckler v. Ark. Dep't of Human Servs., 2011 Ark. App. 375, 383 S.W.3d 912 (2011).

Trial court did not err in awarding permanent custody of a mother's children to their respective fathers because it was in the best interest of the children; the mother's testimony revealed that neither of her

teenage children attended school regularly in her care. One father had obtained much-needed dental work for his twins, had seen to their other medical needs, and both had begun wearing glasses. Thomas v. Ark. Dep't of Human Servs., 2012 Ark. App. 309, — S.W.3d — (2012).

Cited: Ark. Dep't of Human Servs. v. Denmon, 2009 Ark. 485, 346 S.W.3d 283 (2009); Hays v. Ark. HHS, 2009 Ark. App. 864, 372 S.W.3d 830 (2009).

9-27-335. Disposition — Dependent-neglected — Limitations.

(a)(1) At least five (5) working days before ordering the Department of Human Services, excluding community-based providers, to provide or pay for family services in any case in which the department is not a party, the circuit court shall fax a written notice of intent to the Director of the Department of Human Services and to the attorney of the local office of chief counsel of the department.

(2) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(3) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

(b)(1) For purposes of this section, the court shall not specify a particular provider for placement or family services if the department is the payor or provider.

(2)(A) The court may order a child to be placed or to remain in a placement if the court finds the placement is in the best interest of the child after hearing evidence from all parties.

(B) A court may also order a child into a licensed or approved placement after a hearing where the court makes a finding that it is in the best interest of the child based on bona fide consideration of evidence and recommendations from all the parties.

(C) The court shall not order a child to be placed or remain in a placement in a foster home that has been closed or suspended by a child placement agency.

(D)(i) If the health or welfare of a child is in immediate danger while in a court-ordered placement, the department may immediately remove the child from the court-ordered placement.

(ii) The department shall notify all parties within twenty-four (24) hours of the change in placement under subdivision (b)(2)(D)(i) of this section.

(iii) A party may request a hearing on the change in placement made under subdivision (b)(2)(D)(ii) of this section, and the hearing shall be held within five (5) business days of receiving the request.

(c)(1) In all cases in which family services are ordered, the court shall determine the ability of the parent, guardian, or custodian to pay, in whole or in part, for these services.

(2) The determination of ability to pay and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or in part, for the services, the court shall enter a written order setting forth the amount the parent, guardian, or custodian is able to pay for the family services ordered and order the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(d) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or by a licensed social worker who is approved to do home studies and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(e)(1)(A) The court shall enter an order transferring custody of a juvenile in a dependency-neglect case only after determining that reasonable efforts have been made by the department to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.

(B) The juvenile's health and safety shall be the paramount concern of the court in determining if the department could have made reasonable efforts to prevent the juvenile's removal.

(2) If the court finds that reasonable efforts to deliver family services could have been made with the juvenile safely remaining at home but were not made, the court may:

(A) Dismiss the petition;

(B) Order family services reasonably calculated to prevent the need for out-of-home placement; or

(C) Transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement if the transfer is necessary:

(i) To protect the juvenile's health and safety; or

(ii) To prevent the removal of the juvenile from the jurisdiction of the court.

(f) In a case of medical neglect involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

(1) Preventing or remedying serious harm to the child; or

(2) Preventing the withholding of medically indicated treatment from a child with a life-threatening condition.

(g) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services of the Department of Human Services.

(h) For purposes of this section, the court shall not order the department to expend or forward social security benefits for which the department is payee.

History. Acts 1989, No. 273, § 34; 1997, No. 1227, § 10; 1999, No. 401, § 11; 1999, No. 1363, § 2; 2003, No. 1319, § 28; 2003, No. 1809, § 12; 2005, No. 1990, § 16; 2009, No. 956, §§ 15, 16; 2011, No. 1175, § 7; 2013, No. 1037, § 1.

Amendments. The 2011 amendment added (b)(1) and (2).

The 2013 amendment added (b)(2)(C) and (D).

CASE NOTES

Limited Jurisdiction.

Circuit court's February 26, 2009 order directing the Arkansas Department of Human Services (DHS) to place the mother at Timber Ridge Ranch clearly violated the plain language of subsection (b) of this section; therefore, the order was erroneous on its face, and although a court could order DHS to make family services available, its custodial jurisdiction was limited to juveniles. Ark. Dep't of Human Servs. v. Denmon, 2009 Ark. 485, 346 S.W.3d 283 (2009).

9-27-337. Six-month reviews required.

(a)(1) The court shall review every case of dependency-neglect or families in need of services when:

(A) A juvenile is placed by the court in the custody of the Department of Human Services or in another out-of-home placement until there is a permanent order of custody, guardianship, or other permanent placement for the juvenile; or

(B) A juvenile is returned to the parent from whom the child was removed, another fit parent, guardian, or custodian and the court has not discontinued orders for family services.

(2)(A) The first six-month review shall be held no later than six (6) months from the date of the original out-of-home placement of the child and shall be scheduled by the court following the adjudication and disposition hearing.

(B) It shall be reviewed every six (6) months thereafter until permanency is achieved.

(b) The court may require these cases to be reviewed prior to the sixth-month review hearing, and the court shall announce the date, time, and place of the hearing.

(c) At any time during the pendency of any case of dependency-neglect or families in need of services in which an out-of-home placement has occurred, any party may request the court to review the case, and the party requesting the hearing shall provide reasonable notice to all parties.

(d) At any time during the course of a case, the department, the attorney ad litem, or the court can request a hearing on whether or not reunification services should be terminated pursuant to § 9-27-327(a)(2).

(e)(1)(A) In each case in which a juvenile has been placed in an out-of-home placement, the court shall conduct a hearing to review the case sufficiently to determine the future status of the juvenile based upon the best interest of the juvenile.

(B)(i) The court shall determine and shall include in its orders the following:

(a) Whether the case plan, services, and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;

(b) Whether the state has made reasonable efforts to provide family services;

(c) Whether the case plan is moving towards an appropriate permanency plan pursuant to § 9-27-338 for the juvenile; and

(d) Whether the visitation plan is appropriate for the juvenile, the parent or parents, and any siblings, if separated.

(ii)*(a)* The court may order any studies, evaluations, or post-disposition reports, if needed.

(b) All studies, evaluations, or post-disposition reports shall be provided in writing to all parties and counsel at least two (2) days prior to the review hearing.

(c) All parties shall be given a fair opportunity to controvert any part of a study, evaluation, or post-disposition report.

(C) In making its findings, the court shall consider the following:

(i) The extent of compliance with the case plan, including, but not limited to, a review of the department's care for the health, safety, and education of the juvenile while he or she has been in an out-of-home placement;

(ii) The extent of progress that has been made toward alleviating or mitigating the causes of the out-of-home placement;

(iii) Whether the juvenile should be returned to his or her parent or parents and whether or not the juvenile's health and safety can be protected by his or her parent or parents if returned home; and

(iv) An appropriate permanency plan pursuant to § 9-27-338 for the juvenile, including concurrent planning.

(2) Each six-month review hearing shall be completed and a written order shall be filed by the court or by a party or a party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

History. Acts 1989, No. 273, § 36; 1995, No. 404, § 1; 1995, No. 533, § 12; 1995, No. 1337, § 8; 1997, No. 1227, § 11; 1999, No. 401, § 12; 2001, No. 987, § 5; 2001, No. 1503, § 11; 2005, No. 1191, § 3; 2005, No. 1990, § 17; 2007, No. 587, § 20; 2013, No. 490, § 1.

Amendments. The 2013 amendment inserted "from whom the child was removed, another fit parent" in (a)(1)(B); added "and shall be scheduled by the court following the adjudication and disposition hearing" at the end of (a)(2)(A); rewrote (b); and added "and the party requesting the hearing shall provide reasonable notice to all parties" at the end of (c).

9-27-338. Permanency planning hearing.

(a)(1) A permanency planning hearing shall be held to finalize a permanency plan for the juvenile:

(A) No later than twelve (12) months after the date the juvenile enters an out-of-home placement;

(B) After a juvenile has been in an out-of-home placement for fifteen (15) of the previous twenty-two (22) months, excluding trial placements and time on runaway status; or

(C) No later than thirty (30) days after a hearing granting no reunification services.

(2) If a juvenile remains in an out-of-home placement after the initial permanency planning hearing, a permanency planning hearing shall be held annually to reassess the permanency plan selected for the juvenile.

(b)(1) This section does not prevent the Department of Human Services or the attorney ad litem from filing at any time prior to the permanency planning hearing a:

(A) Petition to terminate parental rights;

(B) Petition for guardianship; or

(C) Petition for permanent custody.

(2) A permanency planning hearing is not required prior to any of these actions.

(c) At the permanency planning hearing, based upon the facts of the case, the circuit court shall enter one (1) of the following permanency goals, listed in order of preference, in accordance with the best interest, health, and safety of the juvenile:

(1) Placing custody of the juvenile with a fit parent at the permanency planning hearing;

(2) Returning the juvenile to the guardian or custodian from whom the juvenile was initially removed at the permanency planning hearing;

(3) Authorizing a plan to place custody of the juvenile with a parent, guardian, or custodian only if the court finds that:

(A)(i) The parent, guardian, or custodian is complying with the established case plan and orders of the court, making significant measurable progress toward achieving the goals established in the case plan and diligently working toward reunification or placement in the home of the parent, guardian, or custodian.

(ii) A parent's, guardian's, or custodian's resumption of contact or overtures toward participating in the case plan or following the orders of the court in the months or weeks immediately preceding the permanency planning hearing are insufficient grounds for authorizing a plan to return or be placed in the home as the permanency plan.

(iii) The burden is on the parent, guardian, or custodian to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court in order to authorize a plan to return or be placed in the home as the permanency goal;

(B)(i) The parent, guardian, or custodian is making significant and measurable progress toward remedying the conditions that:

(a) Caused the juvenile's removal and the juvenile's continued removal from the home; or

(b) Prohibit placement of the juvenile in the home of a parent; and

(ii) Placement of the juvenile in the home of the parent, guardian, or custodian shall occur within a time frame consistent with the juvenile's developmental needs but no later than three (3) months from the date of the permanency planning hearing;

(4) Authorizing a plan for adoption with the department's filing a petition for termination of parental rights unless:

(A) The juvenile is being cared for by a relative and the court finds that:

(i) Either:

(a) The relative has made a long-term commitment to the child and the relative is willing to pursue guardianship or permanent custody; or

(b) The juvenile is being cared for by his or her minor parent who is in foster care; and

(ii) Termination of parental rights is not in the best interest of the juvenile;

(B) The department has documented in the case plan a compelling reason why filing such a petition is not in the best interest of the juvenile and the court approves the compelling reason as documented in the case plan; or

(C)(i) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, such services as the department deemed necessary for the safe return of the juvenile to the juvenile's home if reunification services were required to be made to the family.

(ii) If the department has failed to provide services as outlined in the case plan, the court shall schedule another permanency planning hearing for no later than six (6) months;

(5) Authorizing a plan to obtain a guardian for the juvenile;

(6) Authorizing a plan to obtain a permanent custodian, including permanent custody with a fit and willing relative; or

(7)(A) Authorizing a plan for another planned permanent living arrangement that includes a permanent planned living arrangement and addresses the quality of services, including, but not limited to, independent living services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive.

(B) Another Planned Permanent Living Arrangement (APPLA) shall be selected only if the department has documented to the circuit court a compelling reason for determining that it would not be in the best interest of the child to follow one (1) of the permanency plans identified in subdivisions (c)(1)-(7) of this section.

(d) At every permanency planning hearing the court shall make a finding on whether the department has made reasonable efforts and shall describe the efforts to finalize a permanency plan for the juvenile.

(e) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(f) If the court determines that the permanency goal is adoption, the department shall file the petition to terminate parental rights within thirty (30) days from the date of the permanency planning hearing that establishes adoption as the permanency goal.

History. Acts 1989, No. 273, § 37; 1995, No. 1337, § 9; 1997, No. 1227, § 12; 1999, No. 401, § 13; 2001, No. 1503, § 12; 2003, No. 1319, § 22; 2005, No. 1191, § 4; 2009, No. 956, § 17; 2011, No. 1175, § 8; 2013, No. 490, § 2.

Amendments. The 2011 amendment substituted "No later than twelve" for "Twelve" in (a)(1)(A).

The 2013 amendment rewrote (c).

CASE NOTES

Analysis

Applicability.
Custody Award.
Failure to Preserve.
Termination.

Applicability.

Mother who was denied reunification with her daughter and who contended that a circuit court erred in using a previous version of this section, rather than the amended version, waived her contention that the amended version should have been applied by failing to object at the circuit court level. Lamontagne v. Ark. Dep't of Human Servs., 2010 Ark. 190, 366 S.W.3d 351 (2010).

Custody Award.

After a permanency hearing, the circuit court did not clearly err in placing the child in the custody of his mother under subsection (c) of this section; less than fourteen months prior to the final hearing, the father hit the child with the ruler. The child thrived in his mother's care, while the father needed to continue with therapy and complete anger-management classes. Collier v. Ark. Dep't of Human Servs., 2009 Ark. App. 565, — S.W.3d — (2009).

Order granting foster parents' petition for adoption of a child and dismissing a maternal grandmother's petition for guardianship was proper because the trial court did not err by giving effect to the statutory preference for adoption. Davis-Lewallen v. Clegg, 2010 Ark. App. 627, 378 S.W.3d 185 (2010).

After the Arkansas Department of Human Services removed two children from a mother's home, the father claimed reunification with him was the first preference set forth in subdivision (c)(1) of this section, but the preference meant returning the children to the parent from whom they had been taken; the father fell within the same statutory preference as the maternal grandmother, to whom permanent custody had been awarded, "a fit and willing relative" under § 9-27-228(c)(5); the circuit court did not err in applying the statutory preferences. Mahone v. Ark. Dep't of Human Servs., 2010 Ark. App. 820, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 144 (Feb. 23, 2011).

Circuit court's permanency planning order, finding the best interests of two children dictated placement with their maternal grandmother rather than the father, was not clearly erroneous because the father had been unstable at times throughout the case, the children were happy living with their maternal grandmother, and separating the children from their half-sibling would be very hard on the children. Mahone v. Ark. Dep't of Human Servs., 2010 Ark. App. 820, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2011 Ark. App. LEXIS 144 (Feb. 23, 2011).

Trial court did not err under subdivision (c)(5) of this section in determining that an award of permanent custody to a maternal grandmother was in a child's best interest because it was contrary to the child's health and safety to be returned to the child's mother; the mother failed to maintain steady employment or a stable residence and had numerous criminal charges in the past several years. Beeson v. Ark. Dep't of Human Servs., 2011 Ark. App. 317, 378 S.W.3d 911 (2011).

Award of permanent custody of the children to their maternal grandmother was inappropriate because the first statutory preference, under subdivision (c)(1) of this section, applied to the father since he was a parent of the children. The first preference of the statute was not to return the child to the parent to from whom he had been taken. Mahone v. Ark. Dep't of Human Servs., 2011 Ark. 370, 383 S.W.3d 854 (2011).

Trial court erred in awarding permanent custody to maternal grandparents because while the children's father had some issues to resolve, since the case was commenced, a mere six months before the trial court awarded the grandparents custody, he had no positive drug tests, main-

tained employment, and was living in an approved housing situation with his parents; the father fell into the first preference category in subsection (c) of this section while the grandparents fell into the fifth category. Chase v. Ark. Dep't of Human Servs., 2012 Ark. App. 311, — S.W.3d — (2012).

Failure to Preserve.

Mother failed to preserve for appellate review her contention that a trial court's decision to terminate her parental rights was improper where the child had achieved permanency through a custodial placement with a relative under subsection (c) of this section. The mother failed to designate the permanency-planning hearing in her notice of appeal, the transcript of the permanency-planning hearing was not in the record, and there was no indication in the transcript of the termination hearing that the mother ever raised this argument before the trial court. Bryant v. Ark. Dep't of Human Servs., 2011 Ark. App. 390, 383 S.W.3d 901 (2011).

As parents failed to appeal prior reasonable-efforts findings regarding reunification services offered to them pursuant to this section and § 9-27-359, an appellate court was precluded from reviewing those findings for the time periods covered by the prior orders. Anderson v. Ark. Dep't of Human Servs., 2011 Ark. App. 522, 385 S.W.3d 367 (2011).

Termination.

In a termination of parental rights case, a mother was not entitled to additional time to achieve goals for reunification because the mother had a history of drug addiction, and she had been given sixteen months to accomplish reunification, yet she was still fifteen weeks away from completing her rehabilitation. Stephens v. Ark. Dep't of Human Servs., 2013 Ark. App. 249, — S.W.3d — (2013).

Cited: Davis v. Ark. Dep't of Human Servs., 2012 Ark. App. 419, — S.W.3d — (2012).

9-27-339. Probation — Revocation.

CASE NOTES

Evidence.

State met its burden of proving by a preponderance of the evidence that defendant failed to comply with the conditions of his probation where defendant was in possession of medication that was not prescribed to him, knew it was wrong, but did not care about the consequences of his behavior. W.T. v. State, 2009 Ark. App. 773, — S.W.3d — (2009).

In a case in which a minor was adjudicated delinquent pursuant to the juvenile court's finding that he committed the criminal offense of misdemeanor theft by receiving, in violation of § 5-36-106(a), the trial court did not err by revoking the minor's probation from a previous adjudication. He was required to obey all state, federal, and municipal laws as a condition of his probation, and substantial evidence supported the trial court's decision to adjudicate him delinquent. R.W. v. State, 2010 Ark. App. 220, — S.W.3d — (2010).

State proved that defendant committed terroristic threatening and thereby violated his probation because defendant would not share a basketball court with younger children, defendant replied with an expletive when asked to leave, and as defendant began to leave, he threatened that he would be back to "shoot the place up." M.L. v. State, 2013 Ark. App. 130, — S.W.3d — (2013).

9-27-341. Termination of parental rights.

(a)(1)(A) This section shall be a remedy available only to the Department of Human Services or a court-appointed attorney ad litem.

(B) This section shall not be available for private litigants or other agencies.

(2) This section shall be used only in cases in which the department is attempting to clear a juvenile for permanent placement.

(3) The intent of this section is to provide permanency in a juvenile's life in all instances in which the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective.

(4)(A) A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court following the permanency planning hearing and preceding the termination of parental rights hearing is an insufficient reason to not terminate parental rights.

(B) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights.

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

(B) This section does not require that a permanency planning hearing be held as a prerequisite to the filing of a petition to terminate parental rights or as a prerequisite to the court's considering a petition to terminate parental rights.

(2)(A) The petitioner shall serve the petition to terminate parental rights as required under Rule 5 of the Arkansas Rules of Civil Procedure, except:

(i) Service shall be made as required under Rule 4 of the Arkansas Rules of Civil Procedure if the:

(a) Parent was not served under Rule 4 of the Arkansas Rules of Civil Procedure at the initiation of the proceeding;

(b) Parent is not represented by an attorney; or

(c) Initiation of the proceeding was more than two (2) years ago; or

(ii) When the court orders service of the petition to terminate parental rights as required under Rule 4 of the Arkansas Rules of Civil Procedure.

(B) The petitioner shall check with the Putative Father Registry if the name or whereabouts of the putative father is unknown.

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

(A) That it is in the best interest of the juvenile, including consideration of the following factors:

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)*(a)* That a juvenile has been adjudicated by the court to be dependent-neglected and has continued to be out of the custody of the

parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(b) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(*a*) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(ii)*(a)* The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

(b) To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

(c) Material support consists of either financial contributions or food, shelter, clothing, or other necessities when the contribution has been requested by the juvenile's custodian or ordered by a court of competent jurisdiction.

(d) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(ii)(*a*) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(iii) The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father;

(iv) A parent has abandoned the juvenile;

(v)*(a)* A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval.

(b) If the consent is executed under oath by a person authorized to administer the oath, the parent is not required to execute the consent in the presence of the court unless required by federal law or federal regulations;

(vi)*(a)* The court has found the juvenile or a sibling dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents or step-parent or step-parents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;

(vii)*(a)* That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that placement of the juvenile in the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity

or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent the placement of the juvenile in the custody of the parent.

(b) The department shall make reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies;

(viii) The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life; or

(ix)*(a)* The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:

(1) Have committed murder or manslaughter of any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit the murder or manslaughter;

(2) Have committed a felony battery that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery that results in serious bodily injury to any juvenile;

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) "Aggravated circumstances" means:

(i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been or is made by a judge that there is little likelihood that services to the family will result in successful reunification; or

(ii) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person three (3) or more times in the last fifteen (15) months;

(4) Have had his or her parental rights involuntarily terminated as to a sibling of the child; or

(5) Have abandoned an infant, as defined at § 9-27-303(2).

(b) This subchapter does not require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed in subdivision (b)(3)(B)(ix)(*a*) of this section.

(c)(1) An order terminating the relationship between parent and juvenile divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the right to withhold consent to adoption, except the right of the juvenile to inherit from the parent, that is terminated only by a final order of adoption.

(2)(A)(i) Termination of the relationship between a juvenile and one (1) parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.

(ii) If no legal rights have been established, a putative parent must prove that significant contacts existed with the juvenile in order for the putative parent's rights to attach.

(iii) A court may terminate the rights of one (1) parent and not the other parent if the court finds that it is in the best interest of the child.

(B)(i) When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights.

(ii) The notice shall identify the rights sought to be terminated and those that may be terminated.

(iii) The notice shall further specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach.

(3) An order terminating parental rights under this section may authorize the department to consent to adoption of the juvenile.

(d) The court shall conduct and complete a termination of parental rights hearing within ninety (90) days from the date the petition for termination of parental rights is filed unless continued for good cause as articulated in the written order of the court.

(e) A written order shall be filed by the court or by a party or party's counsel as designated by the court within thirty (30) days of the date of the termination hearing or before the next hearing, whichever is sooner.

(f) After the termination of parental rights hearing, the court shall review the case at least every six (6) months, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(g)(1)(A) A parent may withdraw consent to termination of parental rights within ten (10) calendar days after it was signed by filing an affidavit with the circuit clerk in the county designated by the consent as the county in which the termination of parental rights will be filed.

(B) If the ten-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(C) No fee shall be charged for the filing of the affidavit.

(2) The consent to terminate parental rights shall state that the person has the right of withdrawal of consent and shall provide the address of the circuit clerk of the county in which the termination of parental rights will be filed.

History. Acts 1989, No. 273, § 40; 1991, No. 557, § 1; 1995, No. 811, § 1; 1995, No. 909, § 1; 1995, No. 1335, § 7; 1995, No. 1337, § 10; 1997, No. 1227, § 13; 1999, No. 401, § 14; 1999, No. 1306, § 1; 2001, No. 1503, § 14; 2003, No. 1166, § 19; 2003, No. 1319, §§ 23, 24; 2005, No. 1990, § 18; 2007, No. 587, §§ 21-23; 2009, No. 956, §§ 20, 21; 2011, No. 792, § 10; 2011, No. 1175, § 9; 2013, No. 1055, §§ 11, 20.

Amendments. The 2011 amendment by No. 792 rewrote the introductory language of (b)(2)(A); and deleted "In addition to providing constructive notice of the hearing to terminate parental rights" at the beginning of (b)(2)(B).

The 2011 amendment by No. 1175 inserted (c)(2)(A)(iii).

The 2013 amendment, in (b)(3)(B)(vii)*(a)*, substituted "placement of the juvenile in the custody" for "return of

the juvenile to the custody," and "prevent the placement of the juvenile in" for "prevent return of the juvenile to"; and inserted "or is" in (b)(3)(B)(ix)*(a)(3)(B)(i)*.

RESEARCH REFERENCES

ALR. Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C.S. § 1912(d). 61 A.L.R.6th 521.

Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.

CASE NOTES

Analysis

In General.

Failure of a trial court to hold a termination of parental rights hearing within 90 days of the filing of the petition, as required by subsection (d) of this section, did not deprive the trial court of jurisdiction and the trial court did not err in denying the mother's motion to dismiss; the mother failed to prove prejudice by the delay. Hill v. Ark. Dep't of Human Servs., 2012 Ark. App. 108, 389 S.W.3d 72 (2012), review denied, — S.W.3d —, 2012 Ark. LEXIS 128 (Ark. Mar. 8, 2012).

Adoptability.

In a termination of parental rights case under this section, a trial court properly considered adoption evidence in determining whether termination was in the children's best interest; testimony from an adoption specialist that two children were adoptable was sufficient. A mother contended that the evidence of adoptability was not sufficient, but the adoption specialist stated that a family had already inquired about adopting the children. Lowery v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 478, — S.W.3d — (2012).

Aggravated Circumstances.

Termination of parental rights was appropriate where juveniles were subjected to aggravated circumstances under subdivision (b)(3)(B)(ix)(*a*)(*3*)(*B*) of this section; a mother failed to protect her daughter from sexual abuse, and both children were subjected to extreme and repeated cruelty. It was in the best interest of the children to terminate parental rights were adoption suitability was shown, and the children would have been subject to potential harm if returned to the home; since there was no appeal from the aggravated circumstances decision, there was no need to address the alternate ground for termination, which was based on the parents' 25 and 35-year sentences in criminal cases, which constituted substantial periods in the life of the juveniles. Bowman v. Ark. Dep't of Human Servs., 2012 Ark. App. 477, — S.W.3d — (2012).

Appeal.

In an appeal from a termination of parental rights proceeding in which the mother's counsel filed a no-merit brief pursuant to the Linker-Flores decision and Ark. Sup. Ct. & Ct. App. R. 6-9(i), there had been full compliance with Rule 6-9(i) and the appeal was without merit. The appellate court determined that the trial court's order to terminate the mother's parental rights was not clearly erroneous, and the mother's counsel discussed the other rulings made by the trial court and explained why they would not support a meritorious appeal; the appellate court

agreed with the mother's counsel. Gossett v. Ark. Dep't of Human Servs., 2010 Ark. App. 240, 374 S.W.3d 205 (2010).

Because a mother failed to preserve her claims and did not appeal the prior orders finding reasonable efforts by the Arkansas Department of Human Services, it was in the child's best interests to terminate the mother's parental rights pursuant to subdivision (b)(3) of this section. Kelley v. Ark. Dep't of Human Servs., 2011 Ark. App. 481, — S.W.3d — (2011).

Mother's appeal of an order terminating her parental rights to her child was dismissed because she failed to appeal from an earlier order terminating her parental rights based on her consent under subdivision (b)(3)(B)(v)(*a*) of this section. Faas v. Ark. Dep't of Human Servs., 2011 Ark. App. 666, — S.W.3d — (2011).

Termination of the mother's parental rights to her three children was affirmed because the mother did not argue that the statutory grounds supporting termination of her parental rights were not proved by clear and convincing evidence and the appellate court would not address arguments raised for the first time on appeal. Andrews v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 22, 388 S.W.3d 63 (2012).

Counsel met the requirements for no-merit termination cases and that an appeal was without merit, and the court affirmed the termination and granted counsel's motion to be relieved from representation. Smart v. Ark. Dep't of Human Servs., 2013 Ark. App. 257, — S.W.3d — (2013).

Best Interest of the Juvenile.

In granting a petition to terminate a mother's parental rights to two children, a trial court properly conducted a best-interest analysis under subdivision (b)(3)(A) of this section and found that the likelihood that the children would be adopted was very high as the Arkansas Department of Human Services had an adoptive home for the children. Clingenpeel v. Ark. Dep't of Human Servs., 2011 Ark. App. 84, 381 S.W.3d 107 (2011).

Trial court's finding that termination of the parental rights of a mother and a father under this section was in the child's best interest was clearly erroneous as there was no evidence that either parent had ever physically abused or harmed the child or were a threat to do so in the future. While time was of the essence in most termination proceedings, it was markedly less so in this case given the fact that the child lived with his maternal grandparents, and the grandmother expressly stated her desire that the child have continued contact with his parents. Cranford v. Ark. Dep't of Human Servs., 2011 Ark. App. 211, 378 S.W.3d 851 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 322 (Ark. Ct. App. Apr. 20, 2011), review denied, — S.W.3d —, 2011 Ark. LEXIS 401 (Ark. May 5, 2011).

Subdivision (b)(3)(A) of this section required consideration of whether the termination of parental rights was in a child's best interest, which consideration had to include consideration of the likelihood that the child would be adopted, but such likelihood did not have to be established by clear and convincing evidence. Since one of the caseworkers testified that the mother's daughter was adoptable by someone who could handle her needs, there thus was some evidence of adoptability, and even so, limited evidence of adoptability made no legal difference given the clear potential harm of returning custody of the child to the mother, who, according to the evidence, could not provide the stable environment needed by her child. Dority v. Ark. Dep't of Human Servs., 2011 Ark. App. 295, — S.W.3d — (2011).

Termination of the mother's parental rights was proper pursuant to subdivisions (b)(3)(B)(ix)(*a*)(*3*)(*B*)(*I*) of this section because there was little likelihood that services to the family would result in successful reunification. Additionally, termination was in the children's best interest under subdivisions (b)(3)(A)(i) and (ii) because there was a proper permanency plan for the children and the mother failed to maintain stable housing. Baker v. Ark. Dep't of Human Servs., 2011 Ark. App. 400, — S.W.3d — (2011).

Because the children were dependent-neglected by virtue of neglect and inadequate supervision, and because neither parent had achieved a degree of stability that would permit the safe return of the children, termination of their parental rights under subdivision (b)(3) of this section was in the children's best interest. Tucker v. Ark. Dep't of Human Servs., 2011 Ark. App. 430, 389 S.W.3d 1 (2011),

rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 522 (Ark. Ct. App. July 27, 2011).

Termination of a father's parental rights was in the children's best interest because the father had not demonstrated his ability to remain sober in an unstructured environment for a significant time period, and his disability benefits were inadequate to provide a home and all other necessities for his children. Although the father did make commendable progress in attaining sobriety, he did not demonstrate similar progress in achieving sufficient mental health and stability to be a parent to his children. Jessup v. Ark. Dep't of Human Servs., 2011 Ark. App. 463, 385 S.W.3d 304 (2011).

Termination of a mother's parental rights was in the children's best interest because the children had been out of the mother's care for over twelve months, and she had failed to remedy the conditions that had caused them to be removed from her custody. The mother moved in with a man with a lengthy criminal history, and she utterly failed to remedy her drug problems, having tested positive for every drug screen. Jessup v. Ark. Dep't of Human Servs., 2011 Ark. App. 463, 385 S.W.3d 304 (2011).

Clear and convincing evidence supported a trial court determination that termination of parental rights was in the best interests of the children under subdivisions (b)(3)(A) and (B) of this section, as the parents did not show that they could consistently provide the children much-needed stability. Christian-Holderfield v. Ark. Dep't of Human Servs., 2011 Ark. App. 534, 378 S.W.3d 916 (2011), rehearing denied, Christian-Holderfield v. Ark. Dep't of Human Servs. & Minor Children, — S.W.3d —, 2011 Ark. App. LEXIS 685 (Ark. Ct. App. Oct. 26, 2011).

Evidence supported a trial court's determination that termination of parental rights was in a child's best interests, as the grounds for such relief under subdivision (b)(3)(B)(i)(*a*) of this section were met, and the court found that returning the child to his mother had the potential for unhealthy circumstances and harm. Cariker v. Ark. Dep't of Human Servs., 2011 Ark. App. 574, 385 S.W.3d 859 (2011).

Termination of the mother's parental rights to her three children was affirmed because there was sufficient testimony presented on the issue of adoptability and there was evidence presented to establish potential harm to the children if returned to their mother; the mother was found to have subjected the children to aggravated circumstances due to their residence in a drug premises and her involvement in criminal activity. Threadgill v. Ark. Dep't of Human Servs., 2011 Ark. App. 642, 386 S.W.3d 543 (2011).

Order terminating the father's parental rights to his daughter was reversed because there was no evidence that any harm or real risk of potential harm was introduced into the child's life by the father's slight lapses in judgment, or that her best interests would be served by having her father permanently and irrevocably removed from her life. Rhine v. Ark. Dep't of Human Servs. & Minor Child, 2011 Ark. App. 649, 386 S.W.3d 577 (2011).

Termination of the parental rights to appellants' three-year old son was affirmed because the court heard evidence that the seventeen-year-old father consumed alcohol in his home, as shown by the many empty bottles in his room, yet did not attend the drug-and-alcohol assessment for which he was referred. Landis-Maynard v. Ark. Dep't of Human Servs., 2011 Ark. App. 673, 386 S.W.3d 641 (2011).

It was not clearly erroneous for a trial court to find a termination of parental rights was in children's best interest, under subdivision (b)(3)(A) of this section, because (1) the mother whose parental rights were terminated waived any objection to the admissibility of testimony supporting the finding, and (2) the court expressly considered statutorily mandated factors. Brabon v. Ark. Dep't of Human Servs., 2012 Ark. App. 2, 388 S.W.3d 69 (2012).

Termination of the mother's parental rights to her son was affirmed because the circuit court's focus was appropriately on the child's best interests and the risk posed to the child in this case, should appellant's mental illnesses manifest, was not merely a risk of injury, but of death. Rossie-Fonner v. Ark. Dep't of Human Servs., 2012 Ark. App. 29, 388 S.W.3d 38 (2012).

Trial court did not err in terminating a mother's parental rights to her child on

the ground that termination was in the child's best interest under subdivision (b)(3) of this section because the mother failed to accept any meaningful responsibility for the physical abuse that the child was forced to suffer at the hand of her boyfriend; she failed to demonstrate that she could protect and care for her child. Cole v. Ark. Dep't of Human Servs., 2012 Ark. App. 203, 394 S.W.3d 318 (2012).

Under this section, terminating the father's parental rights was in the best interest of the child because the father was unable to obtain and maintain stable and appropriate housing, employment, income, and transportation; the autistic child had significant special needs; and the child had progressed well while in the foster mother's care. Hall v. Ark. Dep't of Human Servs., 2012 Ark. App. 245, — S.W.3d — (2012).

Termination of a father's parental rights was appropriate because a trial court relied upon the record in making its decision, pursuant to this section; even though the father had made some progress and had partially completed a case plan, he failed to complete drug rehabilitation or achieve sufficient stability to parent the child. The father had been given a reasonable opportunity to achieve the required goals, and there were no compelling reasons to give him more time to work on reunification; the trial court noted the child's need for permanency and found that termination was in her best interest. Crow v. Ark. Dep't of Human Servs., 2012 Ark. App. 313, — S.W.3d — (2012).

Father's parental rights were properly terminated because the Arkansas Department of Human Services presented clear and convincing evidence supporting termination under subdivisions (b)(3)(B)(ix)(*a*)(*4*), (b)(3)(B)(viii), and (b)(3)(B)(ii)(*a*) of this section. Further, termination was in the child's best interest as the child was "readily adoptable," and there would be a risk of harm, both physically and psychologically, if the child were placed with the father based on his long history of criminal behavior, unstable lifestyle that included drugs, domestic violence, homelessness, and child endangerment. Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. Spangler v. Ark. Dep't of Human Servs., 2012 Ark. App. 404, — S.W.3d — (2012).

Termination of the mother's parental rights was affirmed because the mother did not challenge the circuit court's determination that she was in no position to have her children returned to her and the circuit court's determination that termination was in the children's best interest in this case was not clearly erroneous. Davis v. Ark. Dep't of Human Servs., 2012 Ark. App. 419, — S.W.3d — (2012).

Trial court's finding that termination of the mother's rights was in the children's best interests was not clearly erroneous; the mother did not argue that the children were not adoptable, there was evidence that she did not regularly visit the children, her housing was inadequate for the children, and her employment status indicated a genuine concern concerning her ability to care for the children. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

Trial court did not clearly err in finding by clear and convincing evidence that it was in a child's best interest to terminate her mother's parental rights where it was clear that the mother's aggressive and oppositional behavior could potentially harm the health and safety of the child if the child were ever returned to her. Among other things: (1) the mother's foster mother testified that the mother was verbally aggressive, refused to comply with house rules, and became so unruly that the foster mother had to call the police; (2) the mother failed to complete her trial placement with her child because she would not cooperate with the department of human services; and (3) the circuit court also specifically found that the mother failed to comply with its orders to attend school and to eliminate any social networking profiles. B.H.1 v. Ark. HHS, 2012 Ark. App. 532, — S.W.3d — (2012).

Trial court did not err in finding that termination of a mother's parental rights was in her child's best interest under subdivision (b)(3)(A) of this section because the mother tested positive for drugs during the case, she had no job or her own residence, she had encountered criminal charges, and she rarely visited the child when allowed. Lovell v. Ark. Dep't of Human Servs., 2012 Ark. App. 547, — S.W.3d — (2012).

Termination of a mother's parental rights was in the child's best interest because the children came into state custody due to her arrest for drug-related offenses, the mother chose to use methamphetamine, which only exacerbated her existing drug problem, and a witness recommended to the court that the mother's parental rights be terminated because the children needed permanency. Gutierrez v. Ark. Dep't of Human Servs., 2012 Ark. App. 575, — S.W.3d — (2012).

Termination of parental rights was proper, because despite efforts of the Arkansas Department of Human Services, reunification would be contrary to the health, safety and welfare of the children, and termination was in the children's best interest; risk of potential harm to the children if returned to the father was evidenced by his continuing inability to maintain employment, stable housing or transportation, and his failure to avail himself of services offered by the Department. Bradbury v. Ark. Dep't of Human Servs., 2012 Ark. App. 680, — S.W.3d —, 2012 Ark. App. LEXIS 793 (Nov. 28, 2012).

Termination of a father's parental rights was in the best interest of the children under subdivision (b)(3)(A) of this section because there was a proper permanency plan in place for the children, and there was a need for permanency where the case lasted more than two years. Moreover, despite the father's progress in some areas, he failed to consistently attend counseling and did not have stable housing for the children. Spencer v. Ark. Dep't of Human Servs., 2013 Ark. App. 96, — S.W.3d — (2013).

Termination of the mother's parental rights to her two youngest children was in their best interests under subdivision (b)(3)(A) of this section because, although she completed portions of her case plan, including anger-management classes, testimony indicated that the anger-control problem had not been resolved and could expose the children to potential harm. Weatherspoon v. Ark. Dep't of Human Servs., 2013 Ark. App. 104, — S.W.3d — (2013).

Termination of a mother's parental rights was in the child's best interests because the mother's rights to five other children had been terminated due to her methamphetamine use, and the mother had undergone intensive therapy and was provided with numerous services on two separate occasions before having her parental rights to those children terminated. Despite losing five children due to her meth use, the mother still used the drug while pregnant. Porter v. Ark. Dep't of Human Servs., 2013 Ark. App. 299, — S.W.3d — (2013).

Continuance for Good Cause.

Termination of the mother's parental rights was proper under subsection (d) of this section because the mother failed to show on appeal that the circuit court abused its discretion in denying her request for a continuance. In her brief, the mother offered no discussion or analysis of why the circuit court's denial of her motion for continuance constituted an abuse of discretion or caused her prejudice; rather, she simply stated that by denying the motion, the trial court abused its discretion. Renfro v. Ark. Dep't of Human Servs., 2011 Ark. App. 419, 385 S.W.3d 285 (2011).

Dependent-Neglected Juvenile.

On appeal from the termination of her parental rights, the mother's argument that it was a logical fallacy and inconsistent with legislative intent under subdivision (b)(3)(B)(i)(*a*) of this section that the definition of "dependent-neglected juvenile" included a "dependent" child was without merit. The statute's clear and unambiguous language expressed that a dependent-neglected juvenile included a dependent juvenile. K.C. v. Ark. Dep't of Human Servs., 2010 Ark. App. 353, 374 S.W.3d 884 (2010), rehearing denied, K. C. v. Ark. Dep't of Human Servs., — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 482 (May 26, 2010), review denied, K. C. v. Ark. Dep't of Human Servs., — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 371 (June 24, 2010).

As the parents' children were subjected to brutal physical beatings and were compelled to witness the public beatings of others at the order of their church leaders, and as the parents refused to seek and obtain safe and stable housing or employment outside the church, their parental rights were properly terminated pursuant to this section. Parrish v. Ark. Dep't of Human Servs., 2011 Ark. 179, — S.W.3d — (2011).

Due Process.

Affirming the termination of the mother's parental rights on subdivision (b)(3)(B)(vii)(*a*) of this section would have resulted in a violation of the mother's due-process rights because due process required, at a minimum, notice reasonably calculated to afford a natural parent the opportunity to be heard prior to terminating his or her parental rights. The mother had no notice that her parental rights might be terminated based upon her mental deficiencies. K.C. v. Ark. Dep't of Human Servs., 2010 Ark. App. 353, 374 S.W.3d 884 (2010), rehearing denied, K. C. v. Ark. Dep't of Human Servs., — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 482 (May 26, 2010), review denied, K. C. v. Ark. Dep't of Human Servs., — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 371 (June 24, 2010).

Evidence.

Clear and convincing evidence supported a best-interest finding as to the adoptability of a mother's children in a parental rights termination proceeding: the children's case worker, an adoption specialist, and a case manager with a developmental-disabilities program all testified that all three children were adoptable. Subdivision (a)(2) of this section did not require that the Arkansas Department of Human Services present proof that there were potential adoptive parents for these particular children. Henson v. Ark. Dep't of Human Servs., 2009 Ark. App. 697, — S.W.3d — (2009).

Judgment terminating a mother's parental rights to her minor children was affirmed because not only was the adoptability requirement of subdivision (b)(3)(A) of this section satisfied by the testimony of the adoption specialist and a caseworker, who said that the children were in pre-adoptive foster placements and that twelve families willing to adopt children had been identified but the mother continued to use drugs and place the children in potential harm. Davis v. Ark. Dep't of Human Servs. & Minor Children, 2009 Ark. App. 815, 370 S.W.3d 283 (2009).

Termination of the father's parental rights to his child was appropriate pursuant to subdivisions (b)(3)(A) and (B) of this section because he continued to have contact with the child's mother after her persistent drug use caused her children to be removed from the home. The father further exhibited inappropriate and potentially dangerous anger and impulsiveness and those factors, coupled with the termination of the father's parental rights in the child's sibling under subdivision (b)(3)(B)(ix)(*a*)(*4*), provided a sufficient basis for the circuit court's termination decision. Tadlock v. Ark. Dep't of Human Servs., 2009 Ark. App. 821, — S.W.3d — (2009).

Termination of the father's parental rights was appropriate pursuant to subdivision (b)(3)(A)(ii) of this section because it was in the child's best interest. In part, the father had not severed ties with the mother, who was a person with a long-term, unresolved drug problem, and evidence was presented that the father had an inability to control his anger, impulses, and emotions. Tadlock v. Ark. Dep't of Human Servs., 2009 Ark. App. 841, 372 S.W.3d 403 (2009).

There was sufficient evidence of grounds for termination of a father's parental rights because the father's failure to pay court-ordered child support, despite the apparent means to do so, constituted a ground for termination under subdivision (b)(3)(B)(ii)(*a*) of this section; additionally, the father's failure to comply with court orders, in particular the circuit court's repeated directions that he maintain weekly contact with the Arkansas Department of Human Services and provide proof of income, demonstrated that factors arose during the case that evidenced his indifference or incapacity to rehabilitate his circumstances. Banks v. Ark. Dep't of Human Servs., 2010 Ark. App. 53, — S.W.3d — (2010).

Court properly terminated a parent's parental rights under this section as the evidence showed that the child was likely to be adopted by the foster parent and that the child's welfare and safety would be jeopardized if returned to the parent's custody; reunification had been unsuccessful, and the child had been in foster care for three years. Blakes v. Ark. Dep't of Human Servs., 2010 Ark. App. 379, 374 S.W.3d 898 (2010).

There was no error in the termination of a parent's parental rights because the child was likely to be adopted, the child's safety was in jeopardy if returned to the parent, and the parent was incarcerated

for 15 years. Barber v. Ark. HHS, 2010 Ark. App. 381, — S.W.3d — (2010).

Sufficient clear and convincing evidence, as required by subdivision (b)(3) of this section showed that termination of the mother's parental rights was in the best interest of the mother's child as the testimony showed that the child was likely to be adopted and that his mother failed, following incarceration, to show her ability to care for him or maintain stability. Reed v. Ark. Dep't of Human Servs. & Minor Child, 2010 Ark. App. 416, 375 S.W.3d 709 (2010).

Termination of parental rights was proper, as at the time of the termination hearing, the 22-month old child had been out of the parent's care for more than 17 months, and the parent had an ongoing drug problem. Timmons v. Ark. Dep't of Human Servs., 2010 Ark. App. 419, 376 S.W.3d 466 (2010).

Clear and convincing evidence supported the termination of a mother's parental rights over her children pursuant to this section; the mother was a long-term drug addict and had made no efforts to comply with the goals of her case plan, including resolving criminal matters and finding suitable housing. Watkins v. Ark. Dep't of Human Servs., 2010 Ark. App. 467, — S.W.3d — (2010).

Sufficient evidence supported a trial court's finding that termination of a father's parental rights, pursuant to subdivisions (b)(3)(B)(i)(*a*) and (b)(3)(B)(vii)(*a*) of this section, to his 29-month-old child, was in the child's best interests because the father had abused the mother, suffered from a personality disorder, and admitted to having anger issues; the child had been previously adjudicated as dependent-neglected and had spent all but two months of his life in foster care. Porter v. Ark. Dep't of Human Servs., 2010 Ark. App. 680, 378 S.W.3d 246 (2010).

Although a mother claimed there was a complete lack of evidence supporting the likelihood of her children's adoptability, sufficient evidence supported a trial court's finding that termination of the mother's parental rights was in the children's best interests, pursuant to subdivision (b)(3)(A) of this section, because a caseworker for the Department of Human Services testified there were prospective adoptive parents for the children if parental rights were terminated and someone had already inquired about adopting one child; the evidence of potential harm to the children was overwhelming because the mother failed to complete a drug treatment program, counseling, anger management classes, parenting classes. or drug screening. Smith v. Ark. Dep't of Human Servs., 2010 Ark. App. 747, 379 S.W.3d 663 (2010).

When a mother and father admitted to being alcoholics, a trial court did not err in terminating the parental rights of the mother and father, pursuant to subdivision (b)(3)(B)(i)(*a*) of this section, because during the pendency of the case, the mother tested positive for alcohol on two occasions and the father not only tested positive for alcohol but was also arrested for being in control of a vehicle while intoxicated; the child, who was removed from the parents' home at the age of five months old and had been out of the parents' custody for more than a year, suffered from Fetal Alcohol Syndrome. Pine v. Ark. Dep't of Human Servs., 2010 Ark. App. 781, 379 S.W.3d 703 (2010).

Termination of a mother's parental rights pursuant to this section was supported by clear and convincing evidence as the mother abandoned the mother's child when the mother, who was a minor when the child was born, fled foster care for five to six months, and evidence indicated that the mother's failure to follow a circuit court's orders showed potential harm to the child. L.W. v. Ark. Dep't of Human Servs., 2011 Ark. App. 44, 380 S.W.3d 489 (2011).

Trial court properly found that termination of a mother's parental rights was in the best interests of the children because at the termination hearing, the mother had no employment, no acceptable home for the children, and was still experiencing relapses with alcohol and methamphetamine. Dawson v. Ark. Dep't of Human Servs., 2011 Ark. App. 106, 391 S.W.3d 352 (2011).

Termination of a mother's parental rights was proper pursuant to subdivision (b)(3)(B) of this section, as the evidence revealed that although the mother stopped using cocaine, the mother could not remain drug-free; the mother completed inpatient drug treatment only to later test positive for marijuana on a number of occasions. Billings v. Ark. Dep't of

Human Servs. & Minor Children, 2011 Ark. App. 111, — S.W.3d — (2011).

In a termination of parental rights proceeding pursuant to this section, the trial court did not err in finding that the father's children were adoptable as the trial court had evidence from an Arkansas Department of Human Services caseworker that in her opinion, the children were adoptable and that there was at least one prospective family for some of the children. Woodall v. Ark. Dep't of Human Servs., 2011 Ark. App. 247, — S.W.3d — (2011).

There was no error in the finding that there was clear and convincing evidence of facts warranting the termination of parental rights because the circuit court was presented with evidence containing direct statements from the potential adoptive parents that they wanted to adopt the children and neither subdivision (b)(3) of this section nor case law, required any specific quantum of evidence. Renfro v. Ark. Dep't of Human Servs., 2011 Ark. App. 419, 385 S.W.3d 285 (2011).

Clear and convincing evidence supported a determination under subdivisions (b)(3)(A) and (B) of this section to terminate a mother's parental rights over her minor children; although she cooperated with the case plan, she made very little progress due to her lack of cognitive ability, inability to reason, and low level of functioning, and she was unable to provide for their basic necessities. Anderson v. Ark. Dep't of Human Servs., 2011 Ark. App. 526, 385 S.W.3d 373 (2011).

Sufficient evidence supported termination of the mother's parental rights under subdivisions (b)(3)(B)(i)(*a*) and (b)(3)(B)(vii)(*a*) of this section as she was unable to demonstrate that, once she was released from jail, she would be able to provide a stable home or sufficient income; prior to her incarceration, she had failed to maintain stable and sufficient income; the record was replete with incidents indicating her poor judgment; the children had spent over 75 percent of their lives in foster care; and the mother had been given ample opportunity to correct the problems giving rise to the children's removal from her home and had not done so. Torres v. Ark. Dep't of Human Servs., 2012 Ark. App. 423, — S.W.3d — (2012).

Appellant's lack of compliance with the case plan and court orders, including his failure to submit to drug screens and testing positive for drugs, as well as his failure to obtain stable housing, employment, or income, supported a grant of termination of parental rights according to the "subsequent other factors" ground under subdivision (b)(3)(B)(vii)(*a*) of this section. Because there was no meritorious argument that there was insufficient evidence to terminate his parental rights, counsel's motion to withdraw was granted. Cotton v. Ark. Dep't of Human Servs., 2012 Ark. App. 455, — S.W.3d — (2012).

Trial court did not err in finding clear and convincing evidence of facts warranting termination of appellants' parental rights under subdivision (b)(3) of this section, because the child had been out of the home for twelve months due to unclean conditions and appellants' drug and alcohol abuse, appellants failed to remedy the situation that led to the removal of the child, and her continued instability was hazardous to her well-being. Bryant v. Ark. Dep't of Human Servs., 2012 Ark. App. 491, — S.W.3d — (2012).

Clear and convincing evidence under subdivision (b)(3) of this section supported the termination of a mother's parental rights to her child because the mother lied to the trial court about her continued involvement with the child's father and allowed him to see the child despite orders forbidding such contact. Duncan v. Ark. Dep't of Human Servs., 2013 Ark. App. 13, — S.W.3d —, 2013 Ark. App. LEXIS 8 (Jan. 16, 2013).

Mother's parental rights were properly terminated because clear and convincing evidence showed (1) the mother's children were adoptable and faced possible harm if returned to the mother, and, (2) if services were provided, the children could not return to the mother in a reasonable time, and, under subdivision (b)(3)(B)(ix)(*a*)(*3*)(*B*)(*i*) of this section, it had been found that there was little chance of reunification. Tatum v. Ark. Dep't of Human Servs., 2013 Ark. App. 101, — S.W.3d — (2013).

Clear evidence supported the trial court's findings of best interests and statutory grounds for termination under subdivision (b)(3)(B)(vii)(*a*) of this section, given that (1) the child had twice been adjudicated dependent-neglected and had been out of the father's custody for over 12

months, (2) after the child had been returned to the father in 2010, he was found in 2011 associating with known drugs users and tested positive for drugs, and (3) when the child was removed from the father's custody that time, he discontinued efforts to maintain contact with the human services department and he infrequently saw the child. Smart v. Ark. Dep't of Human Servs., 2013 Ark. App. 257, — S.W.3d — (2013).

Court properly terminated parental rights because the parents had positive drug screens, their drug-and-alcohol assessments diagnosed both parents with cannabis and alcohol dependence, and they had a lengthy history with social services that was related to their drug use, resulting in the child being in foster care for two years. Kitchen v. Ark. Dep't of Human Servs., 2013 Ark. App. 260, — S.W.3d — (2013).

Parental rights were properly terminated because the caseworker testified that the children had been out of the home for twelve months, the mother admitted to having a bipolar disorder and failing to stay on medication, and the father failed to adequately understand the damage of the mother having unsupervised time with the children. Drake v. Ark. Dep't of Human Servs., 2013 Ark. App. 274, — S.W.3d — (2013).

Mother's parental rights were properly terminated because the mother was afforded reasonable assistance in meeting the goals of her case plan, she moved away without informing social services, she failed to attend therapy, counseling, and parenting classes, and she also failed to achieve stable housing and employment. Hayes v. Ark. Dep't of Human Servs., 2013 Ark. App. 294, — S.W.3d — (2013).

Failure to Preserve.

Mother failed to preserve for appellate review her contention that a trial court's decision to terminate her parental rights was improper where the child had achieved permanency through a custodial placement with a relative under § 9-27-338(c). The mother failed to designate the permanency-planning hearing in her notice of appeal, the transcript of the permanency-planning hearing was not in the record, and there was no indication in the transcript of the termination hearing that the mother ever raised this argument before the trial court. Bryant v. Ark. Dep't of Human Servs., 2011 Ark. App. 390, 383 S.W.3d 901 (2011).

Where a mother failed to appeal prior orders in which a trial court determined that the social service agency had made meaningful efforts towards reunification in a parental rights termination proceeding, the issue of whether reasonable efforts were made could not be raised on appeal as it was waived. Cariker v. Ark. Dep't of Human Servs., 2011 Ark. App. 574, 385 S.W.3d 859 (2011).

Appellant putative father could not argue on appeal that the trial court was not authorized to terminate his parental rights as another man had been named as the minor child's legal father due to his marriage to the child's mother because appellant did not raise that issue before the trial court. Johnson v. Ark. HHS, 2012 Ark. App. 537, — S.W.3d — (2012).

Findings.

In a termination of parental rights case, the trial court failed to hear evidence or make findings regarding the children's adoptability as required by subdivision (b)(3)(B) of this section. Therefore, its order terminating the father's rights was reversed. Haynes v. Ark. Dep't of Human Servs., 2010 Ark. App. 28, — S.W.3d — (2010).

In an appeal from the termination of a mother's parental rights, the Arkansas Department of Human Services (DHS) was required to establish at least one statutory ground in this section. The DHS established that (1) the child had been out of the mother's custody for at least 12 months and DHS had made a meaningful effort to rehabilitate the mother and correct the conditions that caused removal, yet despite those efforts, she had not remedied the conditions; and (2) other factors or issues had arisen after the filing of the original dependency-neglect petition that demonstrated return of the child would be contrary to the child's welfare. Gossett v. Ark. Dep't of Human Servs., 2010 Ark. App. 240, 374 S.W.3d 205 (2010).

The Department of Human Services (DHS) engaged in meaningful efforts to rehabilitate a parent and reunify the parent's family, as provided in subdivision (b)(3)(B)(i)(*a*) of this section; while DHS did not initially provide adequate services, it provided services and referrals for

a full year prior to a termination hearing, and during that year, the parent either failed to take advantage of the services or participated in them inconsistently. Taylor v. Ark. Dep't of Human Servs., 2010 Ark. App. 362, — S.W.3d — (2010).

As the Arkansas Department of Human Services (DHS) established grounds to terminate a mother's parental rights to her son, he was adoptable, and DHS had a proper permanency plan for him, the trial court's finding that termination of the mother's parental rights was in the child's best interest was not clearly erroneous. Rodgers v. Ark. Dep't of Human Servs., 2010 Ark. App. 452, 376 S.W.3d 496 (2010).

Trial court did not clearly err in finding clear and convincing evidence of grounds to terminate the parental rights of a mother and father under this section because they failed to remedy the causes for removal and demonstrated an incapacity or indifference to remedying the problems that prevented return of their children; the father failed to comply with the case plan, demonstrated poor judgment in remaining with the mother, and failed to establish any stable housing or employment, and the mother was unable or unwilling to discontinue drug use, she failed to attend counseling until the petition to terminate was filed, she never held a steady job, she failed to pay court-ordered child support, she failed to establish proper housing, and her psychological evaluation demonstrated that she was a multi-drug abuser and that she had a borderline personality disorder, Vance v. Ark. Dep't of Human Servs., 2010 Ark. App. 778, — S.W.3d — (2010).

There was no issue of arguable merit as to whether termination of the parental rights of a mother and father was in their children's best interest because the trial court clearly considered both parts of the two-part inquiry that required consideration of the potential harm to the children if returned to the parents and the likelihood of adoption in deciding termination was in the children's best interest; there was potential harm because the mother and father had no employment or home, and at least one of them had significant drug and psychological problems, and the children were deemed adoptable, even as a sibling pair. Vance v. Ark. Dep't of Human Servs., 2010 Ark. App. 778, — S.W.3d — (2010).

Termination of the mother's parental rights to her daughter was proper under subdivisions (b)(3)(B)(i)(*a*), (ii)(*a*), and (vii)(*a*) of this section because the mother failed to maintain stable housing, her continuing drug use showed both an indifference to remedying the problems plaguing the family and the potential hardship to the child, and it was unclear how long it would take the mother to overcome her problem. Welch v. Ark. Dep't of Human Servs., 2010 Ark. App. 798, 378 S.W.3d 290 (2010).

Court properly terminated parental rights because the parents' drug use led to their inability to care for their children, causing them to leave the children in the custody of family members who could not provide for the children. While the parents had made progress while incarcerated, they had not shown the capacity to remain drug-free outside of prison or to properly provide for their children; they admittedly did not follow the case plan or take advantage of services offered. Tankersley v. Ark. Dep't of Human Servs., 2012 Ark. App. 109, 389 S.W.3d 96 (2012).

Grandparents.

Termination of appellant father's parental rights was not in his daughter's best interests because termination of the father's parental rights endangered his daughter's relationship with her paternal grandmother, in light of subdivision (c)(1) of this section. The circuit court found that relationship to be the most stable influence on the daughter. Caldwell v. Ark. Dep't of Human Servs., 2010 Ark. App. 102, — S.W.3d — (2010).

Termination of parental rights results in termination of all other familial rights flowing through that parent, pursuant to subdivision (c)(1) of this section. Caldwell v. Ark. Dep't of Human Servs., 2010 Ark. App. 102, — S.W.3d — (2010).

Trial court's decision to terminate a mother's parental rights was not clearly erroneous because the maternal grandmother's home did not meet all relevant child-protection standards, and placement in her home would not be in the children's best interests since the grandmother was married to a man who indicated that he did not want the children and had been accused of child maltreat-

ment; the mother failed to demonstrate how the termination of her parental rights would completely remove the possibility that the grandmother could be a placement for the child because there was no indication that the grandmother would be ineligible to adopt the children if she met all of the necessary requirements. Davis v. Ark. Dep't of Human Servs., 2010 Ark. App. 469, 375 S.W.3d 721 (2010).

Termination of the parents' parental rights to their daughter was appropriate because the issue before the circuit court at the termination hearing was a petition for termination of parental rights and not a custody, guardianship, or adoption petition. The parents failed to advance any new or persuasive argument that a grandmother's willingness to care for the child somehow precluded the termination of their parental rights. Ogden v. Ark. Dep't of Human Servs., 2012 Ark. App. 577, — S.W.3d — (2012).

Grounds.

Arkansas Department of Human Services (DHS) presented evidence that the children, even though they had problems, were likely to be adopted, and termination of the mother's parental rights was proven to be in the children's best interests because they had already been in foster care for twenty-four months and would be harmed by the uncertainty and lack of permanency inherent in continuing in foster care indefinitely while their mother was in prison. Vasquez v. Ark. Dep't of Human Servs., 2009 Ark. App. 575, 337 S.W.3d 552 (2009).

Trial court found aggravated circumstances in the mother's case by her guilty plea to manslaughter in the death of one of the children, her failure to report the sexual abuse of another child by her husband, her failure to obtain medical or psychological help for her daughter after the abuse, and her continuing to have sexual relations with the abuser after she learned of her daughter's abuse; there was little likelihood that services to the family would result in successful reunification under subdivision (b)(3)(B)(ix)(*a*)(*3*)(*B*)(*l*) of this section. Vasquez v. Ark. Dep't of Human Servs., 2009 Ark. App. 575, 337 S.W.3d 552 (2009).

Where the father was arrested while driving to obtain opiates with his three-year-old child, the trial court adjudicated the child dependent based on neglect and the parents' drug abuse; the father was ordered to maintain stable housing and income, complete parenting classes, complete anger-management counseling, and submit to random drug screens. At the termination hearing, witnesses testified as to the father's failure to comply with the court's orders; because he continued to seek opiates, manipulated drug assessments, and did not maintain regular visits with the child, the trial court did not err by terminating his parental rights under subdivision (b)(3)(B)(i)(*a*) of this section. Loe v. Ark. Dep't of Human Servs., 2009 Ark. App. 607, — S.W.3d — (2009).

Trial court properly terminated the mother's parental rights under subdivisions (b)(3)(A) and (B) of this section, where the mother abandoned her children for eleven months and was unwilling to place their needs ahead of her own. Ridley v. Ark. Dep't of Human Servs., 2009 Ark. App. 618, — S.W.3d — (2009).

Circuit court did not clearly err in finding that termination of parental rights was in four children's best interest where the court considered the potential harm in returning the children, their mother exposed them to pornography and gave them alcohol, the mother's husband raped the six-year-old, the mother failed to get a job or suitable housing, and the mother was pregnant with another child the mother could not support at the time of the termination hearing. Thomsen v. Ark. Dep't of Human Servs., 2009 Ark. App. 687, 370 S.W.3d 842 (2009).

Although a father had taken all the recommended classes, maintained employment, stayed drug-free, and had a decent living environment, a trial court did not err in emphasizing the child's distress when his father was around and in terminating the father's rights pursuant to subdivision (b)(3)(B)(i)(*a*) of this section. Bearden v. Ark. Dep't of Human Servs., 2009 Ark. App. 754, — S.W.3d — (2009).

Trial court properly found that termination of parental rights was in the child's best interest and that grounds existed pursuant to subdivisions (b)(3)(B)(i)(*a*), (ii)(*a*) and (vii)(*a*) of this section, including that the parents remained unable or unwilling to appreciate the nutritional and medical needs of the child. Davis v. Ark.

Dep't of Human Servs., 2009 Ark. App. 872, — S.W.3d — (2009).

Termination of the mother's parental rights was appropriate pursuant to subdivisions (b)(3)(B)(i), (ii), (vii), and (viii) of this section because she was still, after all of the services she received, unable to provide a stable home for the child. At the time of the termination, the mother was incarcerated and unable to care for the child or achieve stability in a time frame consistent with the child's needs; further, the child had been out of her mother's custody for more than half of her young life. Ramsey v. Ark. Dep't of Human Servs., 2009 Ark. App. 1365, 377 S.W.3d 399 (2010).

Order terminating the father's parental rights was affirmed because potential harm to the child existed if returned to the father's custody due to the father's history of domestic violence, his diagnosis of a personality disorder and borderline intellectual functioning, and his wife's paranoid schizophrenia. Dozier v. Ark. Dep't of Human Servs., 2010 Ark. App. 17, 372 S.W.3d 849 (2010).

Circuit court did not clearly err in considering the potential-harm factor of subdivision (b)(3)(A)(ii) of this section or in finding that termination of a father's parental rights was in the child's best interest because the father lacked stable housing, which was evidenced by the fact that home studies on his and his mother's residences were denied, he provided no proof of a stable income despite several court orders to do so, and he had paid only a fraction of the court-ordered child support, despite his claim of having substantial earnings; the father's lack of stable housing and income and his failure to pay child support were contrary to the child's best interest. Banks v. Ark. Dep't of Human Servs., 2010 Ark. App. 53, — S.W.3d — (2010).

Although, in cases of termination of parental rights, the circuit court considers the likelihood that the child would be adopted and the potential harm that could arise from returning the child into the parent's custody, pursuant to subdivision (b)(3)(A) of this section, that portion of the statute was inapplicable because appellant father's child was not being placed for adoption. Rather, the child was in the custody of her mother. Caldwell v. Ark. Dep't of Human Servs., 2010 Ark. App. 102, — S.W.3d — (2010).

Trial court did not err in terminating a mother's rights to her three children after 19 months in custody under subdivision (b)(3)(B)(vii)(*a*) of this section based on the determination that two children were behind in their development and had been neglected and abused, and the mother's incarceration and inability to have the children with her. Fredrick v. Ark. Dep't of Human Servs., 2010 Ark. App. 104, 377 S.W.3d 306 (2010).

Termination of the mother's parental rights was affirmed because the evidence demonstrated that all of the children were likely to be adopted and that their welfare and safety would be jeopardized if returned to their mother's custody and the Arkansas Department of Human Services adequately proved the statutory grounds as found by the trial court. Emmert v. Ark. Dep't of Human Servs., 2010 Ark. App. 128, 374 S.W.3d 104 (2010).

Termination of a mother's parental rights was proper, pursuant to subdivision (b)(3)(B) of this section, because, although the mother maintained negative drug screenings after completing drug treatment, at the time of the termination hearing she still had not complied with the trial court's directive that she live independently and obtain employment. Thompson v. Ark. Dep't of Human Servs., 2010 Ark. App. 167, 374 S.W.3d 143 (2010).

Termination of the mother's parental rights was proper under subdivisions (b)(3)(B)(i)(*a*), (ii), and (viii)(*a*) of this section because, by the time she had begun any semblance of serious effort in the case, the child had been in the custody of the Department of Human Services for eight months or more; during that time the mother tested positive for drugs several times; she was arrested and convicted on drug-related charges; the mother failed to obtain a psychological evaluation as ordered; she was inconsistent in visiting the child; and the mother's stated desire to achieve the goals of employment and education, while admirable, did not warrant reversal. Devon v. Ark. Dep't of Human Servs., 2010 Ark. App. 191, — S.W.3d — (2010).

In a case in which a mother appealed the termination of her parental rights to her child, the trial court found by clear

and convincing evidence that termination was in the child's best interests, considering the likelihood that he would be adopted and the potential harm of returning him to his mother's custody. It also found the following two grounds had been proven: (1) the child had been adjudicated dependent-neglected and had continued to be out of the custody of his mother for 12 months and, despite a meaningful effort by the Arkansas Department of Human Services to rehabilitate the mother and correct the conditions that caused removal, those conditions had not been remedied; and (2) other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrated that return of the child to his mother's custody was contrary to his health, safety, or welfare. Churchwell v. Ark. Dep't of Human Servs., 2010 Ark. App. 237, 374 S.W.3d 210 (2010).

In a case in which a mother appealed a circuit court order terminating her parental rights to her two children, she unsuccessfully argued that there was insufficient evidence to support the ruling, both as to grounds for termination and as to the termination being in the children's best interest. The circuit court found by clear and convincing evidence that: (1) the mother caused one child's severe burns; (2) the children were dependent-neglected; (3) they had continued out of the custody of the mother for 12 months; and (4) despite a meaningful effort by the Arkansas Department of Human Services to rehabilitate her and correct the conditions that caused removal, those conditions had not been remedied by the mother. Mason v. Ark. HHS, 2010 Ark. App. 251, — S.W.3d — (2010).

On appeal from the termination of the mother's parental rights, while it was true that the mother was only separated from her child for three months prior to the termination hearing, the facts were undisputed that the child was not in the mother's custody during that time; rather, the child was in the custody of the Arkansas Department of Human Services (DHS) and continued to be in DHS custody in excess of 12 months. As such, the second element of subdivision (b)(3)(B)(i)(*a*) of this section was satisfied. K.C. v. Ark. Dep't of Human Servs., 2010 Ark. App. 353, 374 S.W.3d 884 (2010), rehearing denied, K. C. v. Ark. Dep't of Human Servs., — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 482 (May 26, 2010), review denied, K. C. v. Ark. Dep't of Human Servs., — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 371 (June 24, 2010).

Termination of the mother's parental rights was improper because the third element of subdivision (b)(3)(B)(i)(*a*) of this section, that the parent had not remedied the conditions that caused removal, was not satisfied. It was impossible for the mother to have remedied the problems that caused removal because she was not the cause of the removal of the child, the child's grandmother was. K.C. v. Ark. Dep't of Human Servs., 2010 Ark. App. 353, 374 S.W.3d 884 (2010), rehearing denied, K. C. v. Ark. Dep't of Human Servs., — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 482 (May 26, 2010), review denied, K. C. v. Ark. Dep't of Human Servs., — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 371 (June 24, 2010).

In view of evidence that a mother failed to complete substance abuse programs and was indifferent to having her child in her life, which showed potential harm to the child if he were returned to her, her parental rights were properly terminated based on the "other factors" ground found in subdivision (b)(3)(B)(vii) of this section. Rodgers v. Ark. Dep't of Human Servs., 2010 Ark. App. 452, 376 S.W.3d 496 (2010).

Trial court's decision to terminate a mother's parental rights was not clearly erroneous because the mother's testimony that she was living in a hotel and continuing to use drugs well over a year after her children were taken into custody made it clear that the children would be subjected to a substantial risk of harm if they were returned to her custody. Davis v. Ark. Dep't of Human Servs., 2010 Ark. App. 469, 375 S.W.3d 721 (2010).

Trial court's decision to terminate a mother's parental rights was not clearly erroneous because there was no evidence showing that keeping the mother's parental rights intact was any more likely to allow the children to stay together than termination; the testimony indicated that the children would likely be adopted, keeping the children with the mother would likely expose them to harm, and it was not clear from the evidence that the maternal grandmother would be a suitable placement within a time frame suit-

able for the children, if at all. Davis v. Ark. Dep't of Human Servs., 2010 Ark. App. 469, 375 S.W.3d 721 (2010).

Termination of a mother's parental rights to children, who were previously adjudicated as dependent-neglected, was upheld because there was sufficient evidence to find that the mother failed to correct the conditions that caused the removal of the children. The termination was in the children's best interest because the foster parent was anxious to adopt, the children would suffer potential harm if they were returned to the mother's custody, and the mother was unable to maintain stable or adequate housing and was unemployed. Hughes v. Ark. Dep't of Human Servs. & Minor Children, 2010 Ark. App. 526, — S.W.3d — (2010).

Trial court did not err in terminating a mother's parental rights to her child because there was substantial evidence that the return of the child to the mother was likely to result in serious emotional or physical damage to the child when the mother had abused drugs since she was twelve, and even though she was fully aware that she could lose parental rights to the child, she did not begin to comply with the case plan or court orders until she was incarcerated; the child had been in foster care most of her young life and needed a permanent home, and the mother had no driver's license, no job prospects, and only a "totally inappropriate" home with her grandmother. Allen v. Ark. Dep't of Human Servs., 2010 Ark. App. 608, 377 S.W.3d 491 (2010).

Finding that parents' ongoing issues with mental instability, environmental neglect, and marital troubles warranted termination of their parental rights was not clearly erroneous, and one ground to terminate their rights under subdivision (b)(3)(B) of this section was proven as their rights to an older child had previously been terminated. Masterson-Heard v. Ark. Dep't of Human Servs., 2010 Ark. App. 623, — S.W.3d — (2010).

Judgment terminating the mother's parental rights to her son was reversed because both the mother and the child had mental problems that required treatment and therapy, and their mutual love and affection was something that should not be lightly dismissed considering the child's prospects for happiness. Grant v. Ark. Dep't of Human Servs., 2010 Ark. App. 636, — S.W.3d — 2010).

Judgment terminating the mother's parental rights was affirmed because the trial court was faced with evidence that the mother drank during unsupervised visits with the child, that the mother exhibited resistance to constructive coaching, and the mother's job status was shaky. Edwards v. Ark. Dep't of Human Servs., 2010 Ark. App. 739, 379 S.W.3d 609 (2010).

Termination of the father's parental rights was proper pursuant to subdivision (a)(3) of this section because the children were very young when they were removed from the father's custody and they had resided in foster care for well over one year; the children's need for permanency and stability was evident; the father had little regard for the children's well-being while they were in his custody; he was convicted of the crime of endangering their welfare; he possessed multiple convictions for other criminal offenses; and his lack of judgment reflected poorly on his capacity to care for the children. Johnson v. Ark. Dep't of Human Servs., 2010 Ark. App. 763, — S.W.3d — (2010).

Order terminating a father's parental rights to his child pursuant to subdivision (b)(3)(B)(i)(*a*) of this section was proper because he had a disturbing history of drug abuse and had failed to learn from his previous drug conviction and incarceration; he had lived with the child only a few months during the child's lifetime and seemingly spent much of that time taking drugs. Hoffman v. Ark. Dep't of Human Servs., 2010 Ark. App. 856, 380 S.W.3d 454 (2010).

Termination of the mother's parental rights to two of her sons was appropriate because the trial court specifically considered the likelihood that the juveniles would be adopted and the potential harm, specifically the negative impact on the health and safety of the juveniles, if they were returned to the custody of their mother. The trial court also found that two statutory grounds under subdivisions (b)(3)(B)(i) and (ii) of this section were present; in part, the correction of the conditions that caused removal had not been remedied. Myers v. Ark. Dep't of Human Servs., 2011 Ark. 182, 380 S.W.3d 906 (2011), cert. denied, — U.S. —, 132 S.

Ct. 403, 181 L. Ed. 2d 258, 2011 U.S. LEXIS 7410 (U.S. 2011).

Termination of the father's parental rights was appropriate pursuant to subdivision (b)(3) of this section because he failed to remedy the conditions that caused removal by failing to obtain housing and employment separate and apart from the religious ministry, despite the Arkansas Department of Human Service's meaningful efforts. Seago v. Ark. Dep't of Human Servs., 2011 Ark. 184, 380 S.W.3d 894 (2011).

Grounds for termination of parental rights were proven by clear and convincing evidence that the parents were under the sway of a quasi-religious organization headed by an individual who had been convicted of violating the Mann Act; the circuit court found parents' testimony that they would not permit abuse of their children was not credible. Krantz v. Ark. Dep't of Human Servs., 2011 Ark. 185, 380 S.W.3d 927 (2011).

Termination of the father's parental rights was appropriate because it was in the child's best interest under subdivision (b)(3)(A) of this section to do so. An adoption specialist testified that the child would likely be adopted and potential harm included the father's unwillingness to comply with the case plan by failing to find suitable housing outside the religious ministry. Reid v. Ark. Dep't of Human Servs., 2011 Ark. 187, 380 S.W.3d 918 (2011).

Termination of the father's parental rights was appropriate under subdivision (b)(3)(B)(i)(*a*) of this section because the children had been out of the home for over 12 months and, despite a meaningful effort by the Department of Human Services to rehabilitate the parent and correct the conditions that caused removal, those conditions had not been remedied. The father did not attend all of his required counseling sessions and attended only one staffing meeting; more significantly, he admitted that he failed to obtain housing and employment separate and apart from the religious ministry. Reid v. Ark. Dep't of Human Servs., 2011 Ark. 187, 380 S.W.3d 918 (2011).

Termination of a mother's parental rights in four children was appropriate under subdivision (b)(3)(B)(i)(*a*) of this section where the mother refused to address a drug problem, attend counseling, or complete parenting classes, in direct defiance of court orders and in contravention of recommendations. Richmond v. Ark. Dep't of Human Servs., 2011 Ark. App. 36, — S.W.3d — (2011).

Trial court did not err in terminating a mother's parental rights to her two children pursuant to subdivision (b)(3)(B)(i)(*a*) of this section because the record was clear that the mother had a problem abusing prescription drugs and refused to acknowledge it; adoptability of the children was not an issue, given testimony that families were prepared to adopt them. Harper v. Ark. Dep't of Human Servs., 2011 Ark. App. 280, 378 S.W.3d 884 (2011).

Trial court did not err in terminating a father's parental rights to his two children pursuant to subdivision (b)(3)(B)(vii)(*a*) of this section because his continued use of illegal drugs showed an indifference to remedying the problems plaguing the family and potential harm to the children; he failed to submit to random drug screens. Allen v. Ark. Dep't of Human Servs., 2011 Ark. App. 288, 384 S.W.3d 7 (2011).

Although children were removed from a mother's home based on a report of sexual abuse, a circuit court did not err in relying on subdivision (b)(3)(B)(vii)(*a*) of this section to support termination of the mother's parental rights because subsequent issues arose concerning the chronic violence in the mother's home, including: (1) the mother's continuing cohabitation with the man who perpetrated the violence; (2) the mother's threats towards agency workers; and (3) the mother's need for counseling. Porter v. Ark. Dep't of Human Servs., 2011 Ark. App. 342, — S.W.3d — (2011).

Termination of the mother's parental rights was proper pursuant to subdivisions (b)(3)(B)(ix)(*a*)(*3*)(*B*)(*I*) of this section because there was little likelihood that services to the family would result in successful reunification. Additionally, termination was in the children's best interest under subdivisions (b)(3)(A)(i) and (ii) because there was a proper permanency plan for the children and the mother failed to maintain stable housing. Baker v. Ark. Dep't of Human Servs., 2011 Ark. App. 400, — S.W.3d — (2011).

Since a mother's appeal challenged only one of the three grounds listed by the trial

court for termination of the mother's parental rights under subdivision (b)(3)(B) of this section, leaving unchallenged the two alternative grounds on which the trial court relied, the court would not reverse the judgment. Martin v. Ark. Dep't of Human Servs., 2011 Ark. App. 423, 384 S.W.3d 580 (2011).

Mother's rights were terminated pursuant to subdivision (b)(3)(B)(vii)(*a*) of this section because within five months of having her children returned she was arrested for sixteen felony counts of forgery, and three months after that, she was charged with six felony drug charges, including selling pain medication prescribed for her ill daughter. She was not employed, the children could not live at the halfway house she entered after being released from jail, and the children had been out of her custody for a total of nearly four years. Stewart v. Ark. Dep't of Human Servs., 2011 Ark. App. 577, — S.W.3d — (2011).

Termination of the father's parental rights to his three children was affirmed because after appellant was allowed unsupervised overnight visits with the children, one of the children made new allegations of inappropriate touching and another developed nightmares and other issues that resolved when the visits stopped. Murray v. Ark. Dep't of Human Servs., 2011 Ark. App. 588, 385 S.W.3d 897 (2011).

Termination of the parental rights of appellants to their two minor children was affirmed because despite the services provided by the Arkansas Department of Human Services, the mother continued to abuse alcohol and thus failed to remedy the conditions that caused the children's removal from her custody. Burnett v. Ark. Dep't of Human Servs., 2011 Ark. App. 596, 385 S.W.3d 866 (2011).

Termination of parental rights was appropriate because the written judgment referenced the Arkansas Department of Human Services' petition, there was evidence to support termination under subdivision (b)(3)(B)(vii)(*a*) of this section, and the mother had abandoned the child. Nespor v. Ark. Dep't of Human Servs., 2011 Ark. App. 745, 387 S.W.3d 239 (2011).

Trial court did not err in terminating a mother's parental rights to her five children because due to the children testing positive on their drug screens, they were subjected to aggravated circumstances, as defined in subdivision (b)(3)(B)(ix)(*a*)(*3*)(*B*)(*i*) of this section. Reichard v. Ark. Dep't of Human Servs., 2011 Ark. App. 762, 387 S.W.3d 279 (2011).

Trial court did not err in terminating a mother's parental rights to her child under subdivision (b)(3)(B)(ix)(*a*)(*3*)(*B*)(*i*) of this section because there were no additional services that could be offered to make her a fit parent, and the services offered failed to give her any insight into proper parenting; there were also two different occurrences of unexplained injuries to the child's face. Anderson v. Ark. Dep't of Human Servs., 2011 Ark. App. 791, 387 S.W.3d 311 (2011).

Order terminating appellant's parental rights to her children was affirmed because the trial court had evidence with which to consider the likelihood of the children's adoption and made a finding that they were likely to be adopted; the adoption specialist stated that she had been able to find adoptive parents for sibling groups. Bayron v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 75, 388 S.W.3d 482 (2012).

Trial court did not err under subdivision (b)(3)(B)(ix)(*a*)(*3*)(*B*)(*i*) of this section in terminating parents' rights to their child because the child had been subjected to aggravated circumstances based on sexual abuse by her adoptive father; given the family's attitudes and lack of progress toward reunification after more than one year of services, the finding that termination was in the child's best interest was not erroneous. Draper v. Ark. Dep't of Human Servs., 2012 Ark. App. 112, 389 S.W.3d 58 (2012).

Termination of the mother's parental rights was appropriate pursuant to subdivisions (b)(3)(B)(i)(*a*) and (vii)(*a*) of this section because she had been unable to adequately deal with her methamphetamine addiction, despite services being offered; she refused to provide samples for several drug tests; she falsified her urine on other drug tests; and she had been held in contempt numerous times for failing drug tests. Fetters v. Ark. Dep't of Human Servs., 2012 Ark. App. 152, — S.W.3d — (2012).

Trial court did not err in terminating a mother's parental rights under subdivision (b)(3)(B)(i)(*a*) of this section because

her children were removed from her custody due to inadequate supervision, environmental neglect, and her unfitness due to alcohol abuse; at the time of the termination hearing 13 months later, she was not in compliance with the majority of the case plan. Lewis v. Ark. Dep't of Human Servs., 2012 Ark. App. 154, 391 S.W.3d 695 (2012).

Trial court did not err under subdivision (b)(3)(B)(vi)(*a*) of this section in terminating a father's parental rights to his three children because one of the children maintained that he sexually abused her and that she did not want to go home with him because she believed the abuse would continue; a caseworker did not believe that the children could be safely placed back with him. Blanchard v. Ark. Dep't of Human Servs., 2012 Ark. App. 215, 395 S.W.3d 405 (2012).

Court properly terminated a mother's parental rights because the mother did not demonstrate that she was able to provide a stable home or sufficient income, she did not demonstrate appropriate decision-making regarding her relationships and roommates, and the children had a "high likelihood" of adoption. Reed v. Ark. Dep't of Human Servs., 2012 Ark. App. 369, — S.W.3d — (2012).

Trial court did not err in terminating the mother's parental rights because there was sufficient evidence to support a finding that termination was in the child's best interest, and the Arkansas Department of Human Services had proved that the mother had abandoned the child and had subjected him to aggravated circumstances under subdivision (b)(3)(B)(ix)(*a*)(*3*)(*B*) of this section and § 9-27-303(1). Thus, counsel complied with Ark. Sup. Ct. & Ct. App. R. 6-9(i), and the appeal was wholly without merit. Fant v. Ark. Dep't of Human Servs., 2012 Ark. App. 428, — S.W.3d — (2012).

In a termination of parental rights case under this section, even though a mother contended that a meaningful effort was not made to rehabilitate her and to correct the conditions that caused the removal of the children, she did not challenge either of the grounds upon which the trial court's order was based. Moreover, reasonable efforts did not require the cleaning of the mother's house for her. Lowery v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 478, — S.W.3d — (2012).

Finding that the department of human services proved at least one ground for termination was not clearly erroneous, given in part that (1) there was testimony that while the mother had housing, it was not stable housing, (2) as of the date of the hearing, the only housing she had was inadequate to meet the basic needs of the children, (3) there was testimony that she had a spotty work history and she was at her current job for only one month, and (4) her visitation with the children was sporadic and it was disruptive to the children when she failed to attend visitations. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

Trial court's finding that the department of human services proved that a father did not maintain meaningful contact with the children was not clearly erroneous, given in part that (1) he only saw them four times in the four months before his arrest, and in the time that followed, his only attempt at contact was two letters to the children, (2) nothing indicated that he asked for permission to see the children or that he took advantage of any chances to see them that would have been available while he was in prison, and (3) although the department did not produce evidence that he did not provide support, the ground the trial court found was met with either a lack of support or a lack of meaningful contact. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

Because the department of human services is required to prove only one statutory ground for termination under subdivision (b)(3)(B) of this section, it was not necessary for the court to consider the father's other arguments. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

It was not clearly erroneous for the trial court to find that returning the child to the father would have subjected her to potential harm, given that he never advanced to a trial placement or overnight visits, nor did he request this, the child was bonded to her foster parents, and it was reasonable to find that taking her from them to live with the father who willingly had the bare minimum of contact with her would have subjected her to harm. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

In the two years the child was in foster care, the father made two child support payments for a total of $200, and he said he thought it was better for him to spend the money on her; this could have raised doubts about his willingness to support the child if the child was returned to him. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

Court affirmed the termination of a father's parental rights to his child; there was a lack of the payment of child support, plus there was evidence of questionable judgment on the father's part, including supporting the child being returned to the mother, although she was unfit to raise the child. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

Trial court did not err in terminating a father's parental rights to his child pursuant to subdivision (b)(3)(B)(i)(*a*) of this section because the trial court's finding that the father had sexually abused his girlfriend's daughter and a psychiatrist's testimony that he was not a fit parent were sufficient evidence of potential harm; the alleged sexual abuse was the reason for removal more than 12 months before. Gipson v. Ark. Dep't of Human Servs., 2012 Ark. App. 554, — S.W.3d — (2012).

Court properly terminated parental rights because a visit to the parents' home showed a garbage-strewn yard, a filthy kitchen, a filthy bathroom, and a house filled with thick smoke; there was concern that the father was tracking sewage into the house and that bacteria were being brought into the house. Gray v. Ark. Dep't of Human Servs., 2013 Ark. App. 24, — S.W.3d — (2013).

Trial court did not err in terminating a mother's parental rights pursuant to subdivision (b)(3)(B)(vii) of this section because she failed to obtain drug treatment, a relevant point given that illegal drug use was a contributing factor in the death of the children's sibling. She failed to complete a psychological evaluation or enter counseling; such factors arose after a petition for dependency-neglect was filed. Campbell v. Ark. Dep't of Human Servs., 2013 Ark. App. 84, — S.W.3d — (2013).

Trial court did not err under subdivision (b)(3)(B)(vii) of this section in terminating a father's parental rights to his three children because he failed to provide adequate and stable housing, did not have a driver's license, failed to complete drug and alcohol screening and treatment, and was unable to care for and provide for the special needs of his children. Fenstermacher v. Ark. Dep't of Human Servs. & Minor Children, 2013 Ark. App. 88, — S.W.3d — (2013).

Mother's parental rights were properly terminated where it was shown that her children had been adjudicated dependent-neglected, they had remained out of their parents' custody for more than 12 months, and the conditions that caused removal had not been remedied, despite meaningful efforts by the Arkansas Department of Human Services; the fact that one child was placed in the mother's custody for a period of time did not present a barrier to termination because the 12 months did not have to immediately precede the filing of the petition nor did it have to be for 12 consecutive months. In addition to the adoptability of the children and their need for permanency, the mother failed to secure employment until shortly before the termination hearing, and she admitted lying about her drug usage and falsifying a drug screen. Spencer v. Ark. Dep't of Human Servs., 2013 Ark. App. 96, — S.W.3d — (2013).

Trial court did not err in terminating a mother's parental rights to her two children pursuant to subdivision (b)(3)(B)(vii)(*a*) of this section because the decision was fueled by her instability and drug use; she was unable to visit the children or do a trial placement with them in the nine months since they had been taken from her. Davison v. Ark. Dep't of Human Servs., 2013 Ark. App. 136, — S.W.3d — (2013).

Mother's appeal from the termination of her parental rights under subdivisions (b)(3)(B)(i)(*a*) and (b)(3)(B)(vii)(*a*) of this section would have been frivolous and counsel was relieved from representation where the termination order followed all governing statutes; the trial court found that the children were in the Arkansas Department of Human Services custody for 36 months, termination was in their best interest, and there was potential harm in returning them to the mother. Moreover, she failed to comply with the case plan, she tested positive for drugs, she lacked stable housing, she was living with a sex offender, and she had periods of incarceration. Robertson v. Ark. Dep't of

Human Servs., 2013 Ark. App. 218, — S.W.3d — (2013).

Substantial evidence supported the circuit court's conclusion that termination of a mother's parental rights was in her children's best interest. Based on the mother's ongoing substance-abuse problems, there was evidence of potential harm to the children if they were reunited with her. Dang v. Ark. Dep't of Human Servs., 2013 Ark. App. 251, — S.W.3d — (2013).

Termination of a mother's parental rights was warranted based on the fact that the children had been out of the home for more than one year and the conditions that caused removal had not been remedied. Although this ground was not alleged in the termination petition, there was substantial evidence supporting the circuit court's finding. Dang v. Ark. Dep't of Human Servs., 2013 Ark. App. 251, — S.W.3d — (2013).

Termination of the mother's parental rights to her son was appropriate because, even if she would be released from prison when she hoped, she would not be able to immediately reunite with the child. The stated intent of this section was to provide permanency in a juvenile's life in all instances where return of a juvenile to the family home was contrary to the juvenile's health, safety, or welfare, and it appeared from the evidence that return to the family home could not be accomplished in a reasonable period of time under subdivision (b)(3)(B)(viii) of this section. Adams v. Ark. Dep't of Human Servs., 2013 Ark. App. 253, — S.W.3d — (2013).

Although there was little direct evidence to show that the mother was responsible for the child's behavior, because the circumstantial evidence that she either abused the child or failed to protect him from abuse was overwhelming, under subdivision (b)(3)(B)(vii) of this section, termination of her parental rights was proper and in the child's best interests. McDaniel v. Ark. Dep't of Human Servs., 2013 Ark. App. 263, — S.W.3d — (2013).

Mother's parental rights were properly terminated because the mother had no home of her own, she still used illegal drugs, she had disobeyed court orders by failing to complete parenting classes and outpatient drug treatment, she had not obtained stable employment, and she did not maintain contact with the children. The trial court found that, since there had been a finding that there was little likelihood that services would result in successful reunification, aggravated circumstances existed. Strong v. Ark. Dep't of Human Servs., 2013 Ark. App. 278, — S.W.3d — (2013).

Father's parental rights were properly terminated because there was testimony that, although the father had completed parenting classes, his parenting skills had not improved, and the father had an inability to control his temper and exhibited intimidating and aggressive behavior that negatively impacted his daughter. The father tested positive for marijuana and opiates, and at the time of the termination hearing he lived in a one-bedroom apartment and was unemployed with no transportation. Armstrong v. Ark. Dep't of Human Servs., 2013 Ark. App. 295, — S.W.3d — (2013).

Imprisonment.

Trial court did not err under subdivision (b)(3)(B)(viii) of this section in terminating a mother's parental rights to her child because by the time she would be released from prison, the child would have spent more than half of the child's life in foster care; even then, there was no guarantee that the child would be immediately able to return to the mother's custody. Hill v. Ark. Dep't of Human Servs., 2012 Ark. App. 108, 389 S.W.3d 72 (2012), review denied, — S.W.3d —, 2012 Ark. LEXIS 128 (Ark. Mar. 8, 2012).

Indian Child Welfare Act.

Trial court did not err in terminating a mother's parental rights to her child because its order could easily be construed as making the necessary finding under the Indian Child Welfare Act of 1978, 25 U.S.C.S. § 1912(f), that there was proof beyond a reasonable doubt that the mother's continued custody was likely to result in serious emotional or physical damage to the child; the trial court found that the Arkansas Department of Human Services had proven beyond a reasonable doubt grounds under subdivision (b)(3)(B)(i)(*a*) of this section because the child had been in foster care for seventeen months, and the mother had not corrected the conditions that caused removal. Allen v. Ark. Dep't of Human Servs., 2010 Ark. App. 608, 377 S.W.3d 491 (2010).

Jurisdiction.

Mother did not preserve for review the argument that service of a petition to terminate parental rights by warning order pursuant to Ark. R. Civ. P. 4(f) was not sufficient because her attorney was provided with notice under Ark. R. Civ. P. 5, the Arkansas Department of Human Services satisfied the requirement of diligent inquiry provided in Rule 4, and at no time during the initial hearing on the petition for termination of the mother's parental rights was an objection made or a ruling requested on the issue of whether service was proper; because the mother was represented by counsel throughout the proceedings, service was properly made upon counsel of record pursuant to Rule 5, the circuit court had jurisdiction, and it was the mother's responsibility to stay informed and keep her attorney informed of her current address. Blackerby v. Ark. Dep't of Human Servs., 2009 Ark. App. 858, 373 S.W.3d 375 (2009).

Service.

Termination of a father's parental rights was improper because he was not properly served with the petition under subdivision (b)(2)(A) of this section; service was not effectuated by mail under Ark. R. Civ. P. 4 because it was not established that a person who signed a green card was the father's authorized agent, and service was not shown under Ark. R. Civ. P. 5 where the alleged method for serving the father's lawyer was not shown. Awareness of the case did not cure a service defect, the error was not harmless, and the father did not waive his insufficient service objection since he raised it when the hearing on the petition to terminate began. Brown v. Ark. Dep't of Human Servs., 2013 Ark. App. 201, — S.W.3d — (2013).

Standard of Review.

Father did not challenge the finding that the child was adoptable, and thus the court had to examine if the finding that returning the child to the father would subject her to potential harm was clearly erroneous. Wittig v. Ark. Dep't of Human Servs., 2012 Ark. App. 502, — S.W.3d — (2012).

Unfitness of Parent.

Where a daycare worker reported that a child had an adult-sized hand print on her face, she often wore dirty diapers, and her clothes smelled of marijuana, the father partially complied with the case plan and court orders while the child was in foster custody but did not correct the underlying problems that led to the child's abuse and neglect; the father failed to take his medication, his mental illness was untreated, and his work history showed frequent job changes. The trial court did not err by terminating the father's parental rights under subdivision (b)(3)(B)(i)(*a*) of this section based on a finding that the child would be subject to potential harm if returned to his custody. Byers v. Ark. Dep't of Human Servs., 2009 Ark. App. 581, — S.W.3d — (2009).

When the children were removed from the home and adjudicated dependent based on physical abuse and parental unfitness due to drug use, the mother failed to maintain appropriate housing and employment, did not follow the recommendations of her psychological evaluation, or remain drug free. The trial court did not err by terminating her parental rights under subdivision (b)(3)(B)(vii)(*a*) of this section; the mother's appeal was frivolous. McKellar v. Ark. Dep't of Human Servs., 2009 Ark. App. 781, — S.W.3d — (2009).

Clear and convincing evidence supported the termination of a parent's parental rights where the psychological examiner who examined the parent testified that the parent presented with frank paranoia and mistrust and that any possibility for reunification would come only after the parent received psychiatric treatment and substance-abuse analysis. Aday v. Ark. Dep't of Human Servs., 2010 Ark. App. 677, — S.W.3d — (2010).

Termination of a father's parental rights was proper under this section as it removed the children from the father's continuing violence and was in the best interests of the children; the fact that the children were remaining with the mother did not deprive the children of permanency as the mother was their most stable influence. Hayes v. Ark. Dep't of Human Servs., 2011 Ark. App. 21, — S.W.3d — (2011).

9-27-342. Proceedings concerning illegitimate juveniles.

CASE NOTES

Findings.

Termination of a father's parental rights to his children was affirmed because, despite the father's contention that there was a complete lack of evidence that the children were adoptable, the children's caseworker, who had worked on the case for over a year after its inception, testified at the termination hearing that the children were adoptable, and the testimony from a caseworker or an adoption specialist that children were adoptable was alone sufficient to meet the clear and convincing standard to establish the children's adoptability. Thompson v. Ark. Dep't of Human Servs., 2012 Ark. App. 124, — S.W.3d — (2012).

9-27-348. Publication of proceedings.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Constitutional Issues. 37 A.L.R.6th 55.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Procedural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

9-27-353. Duties and responsibilities of custodian.

(a) It shall be the duty of any person or agency appointed as the custodian of any juvenile in a proceeding under this subchapter to care for and maintain the juvenile and to see that the juvenile is protected, properly trained and educated, and has the opportunity to learn a trade, occupation, or profession.

(b)(1) The person or agency appointed as the custodian of a juvenile in a proceeding under this subchapter has the right to obtain medical care for the juvenile, including giving consent to specific medical, dental, or mental health treatments and procedures as required in the opinion of a duly authorized or licensed physician, dentist, surgeon, or psychologist, whether or not such care is rendered on an emergency, inpatient, or outpatient basis.

(2) If there is an open dependency-neglect proceeding, the custodian shall not make any of the following decisions without receiving express court approval:

(A) Consent to the removal of bodily organs, unless the procedure is necessary to save the life of the juvenile;

(B) Consent to withhold life-saving treatments;

(C) Consent to withhold life-sustaining treatments; or

(D) The amputation of any body part.

(c) The custodian has the right to enroll the juvenile in school upon the presentation of an order of custody.

(d) The custodian has the right to obtain medical and school records of any juvenile in his or her custody upon presentation of an order of custody.

(e) Any agency appointed as the custodian of a juvenile has the right to consent to the juvenile's travel on vacation or similar trips.

(f)(1) It shall be the duty of every person granted custody, guardianship, or adoption of any juvenile in a proceeding under or arising out of a dependency-neglect action under this subchapter to ensure that the juvenile is not returned to the care or supervision of any person from whom the child was removed or any person the court has specifically ordered not to have care, supervision, or custody of the juvenile.

(2) This section shall not be construed to prohibit these placements if the person who has been granted custody, guardianship, or adoption obtains a court order to that effect from the juvenile division of circuit court that made the award of custody, guardianship, or adoption.

(3) Failure to abide by subdivision (f)(1) of this section is punishable as a criminal offense under § 5-26-502(a)(3).

(g) The court shall not split custody, that is, grant legal custody to one (1) person or agency and grant physical custody to another person or agency.

History. Acts 2001, No. 1503, § 15; 2007, No. 587, § 25; 2009, No. 956, § 23; 2013, No. 1055, § 12.

Amendments. The 2013 amendment rewrote (b); inserted present (c) and redesignated the remaining subsections accordingly; and substituted "under" for "pursuant to" in present (f)(1) and (f)(3).

9-27-355. Placement of juveniles.

(a) The court shall not specify a particular provider for placement of any foster child.

(b)(1) A relative of a juvenile placed in the custody of the Department of Human Services shall be given preferential consideration for placement if the relative caregiver meets all relevant child protection standards and it is in the best interest of the juvenile to be placed with the relative caregiver.

(2) Placement or custody of a juvenile in the home of a relative or other person shall not relieve the department of its responsibility to actively implement the goal of the case.

(3)(A) The juvenile shall remain in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined at § 9-28-402(12) until the home is opened as a regular foster home, as a provisional foster home if the person is a relative to one of the children in the sibling group, including step-siblings, or the court grants custody of the juvenile to the relative or person after a written approved home study is presented to the court.

(B) For placement only with a relative or fictive kin:

(i) The juvenile and the juvenile's siblings or step-siblings may be placed in the home of a relative or fictive kin on a provisional basis for up to six (6) months pending the relative or fictive kin's home being opened as a regular foster home;

(ii) If the relative or fictive kin opts to have his or her home opened as a provisional foster home, the relative or fictive kin shall not be paid a board payment until the relative or fictive kin meets all of the requirements and his or her home is opened as a regular foster home;

(iii) Until the relative or fictive kin's home is opened as a regular foster home, the relative or fictive kin may:

(a) Apply for and receive benefits that the relative or fictive kin may be entitled to due to the placement of the juvenile in the home, such as benefits under the Transitional Employment Assistance Program, § 20-76-401, and Supplemental Nutrition Assistance Program (SNAP); and

(b) Receive child support or any federal benefits paid on behalf of the juvenile in the relative or fictive kin's home; and

(iv) If the relative or fictive kin's home is not fully licensed as a foster home after six (6) months of the placement of the juvenile and the siblings or step-siblings in the home:

(a) The department shall remove the juvenile and any of the siblings or step-siblings from the relative or fictive kin's home and close the relative or fictive kin's provisional foster home; or

(b) The court shall remove custody from the department and grant custody of the juvenile to the relative or fictive kin subject to the limitations outlined in subdivision (b)(4) of this section.

(4) If the court grants custody of the juvenile and any siblings or step-siblings to the relative or other person:

(A)(i) The juvenile and any siblings or step-siblings shall not be placed back in the custody of the department while remaining in the home of the relative or other person.

(ii) The juvenile and any siblings or step-siblings shall not be removed from the custody of the relative or other person, placed in the custody of the department, and then remain or be returned to the home of the relative or other person while remaining in the custody of the department;

(B) The relative or other person shall not receive any financial assistance, including board payments, from the department, except for financial assistance for which the relative has applied and for which the relative or other person qualifies under the program guidelines, such as the Transitional Employment Assistance Program, § 20-76-401, food stamps, Medicaid, and the federal adoption subsidy; and

(C) The department shall not be ordered to pay the equivalent of board payments, adoption subsidies, or guardianship subsidies to the relative or other person as reasonable efforts to prevent removal of custody from the relative.

(c)(1) Juveniles who are in the custody of the department shall be allowed trial placements with parents or the person from whom custody was removed for a period not to exceed sixty (60) days.

(2) At the end of sixty (60) days, the court shall either place custody of the juvenile with the parent or the person from whom custody was

removed, or the department shall return the juvenile to a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402(12).

(d) When a juvenile leaves the custody of the department and the court grants custody to the parent or another person, the department is no longer legal custodian of the juvenile, even if the juvenile division of circuit court retains jurisdiction.

History. Acts 2003, No. 1319, § 26; 2005, No. 874, § 1; 2007, No. 587, §§ 26, 27; 2011, No. 591, § 7; 2013, No. 478, § 1; 2013, No. 1055, §§ 13, 21.

Amendments. The 2011 amendment deleted former (a), (b)(1), and (b)(3) and redesignated former (b)(2) as (a); redesignated former (c) through (e) as (b) through (d); and, in (b)(1), substituted "Department of Human Services" for "department"; deleted former (b)(3) and redesignated the remaining subdivisions accordingly; in (b)(3)(A), substituted "9-28-402(12)" for "9-28-402," and inserted "to one of the children in the sibling group, including step-siblings"; inserted "and the juvenile's siblings or step-siblings" in (b)(3)(B)(i); inserted "and the siblings or step-siblings" in (b)(3)(B)(iv); inserted "and any of the siblings or step-siblings" in (b)(3)(B)(iv)(*a*), (b)(4), (b)(4)(A)(i) and (ii); substituted "subdivision (b)(4)" for "subdivision (c)(5)" in (b)(3)(B)(iv)(*b*); and inserted "or the person from whom custody was removed" in (c)(1) and (c)(2).

The 2013 amendment by No. 478 inserted "or fictive kin" following "relative" throughout the section; subdivided part of (b)(3)(B)(iii) as (b)(3)(B)(iii)(a); substituted "Supplemental Nutrition Assistance Program (SNAP)" for "food stamps" in (b)(3)(B)(iii)(a); and added (b)(3)(B)(iii)(b).

The 2013 amendment by No. 1055, in (b)(3)(B)(iii), substituted "the Supplemental Nutrition Assistance Program (SNAP)" for "food stamps" in *(a)* and added *(b)*; and inserted "or guardianship subsidies" in (b)(4)(C).

CASE NOTES

Cited: Andrews v. Ark. Dep't of Human Servs. & Minor Children, 2012 Ark. App. 22, 388 S.W.3d 63 (2012).

9-27-356. Juvenile sex offender assessment and registration.

RESEARCH REFERENCES

ALR. State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Constitutional Issues. 37 A.L.R.6th 55.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Duty to Register, Requirements for Registration, and Procedural Matters. 38 A.L.R.6th 1.

State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders — Expungement, Stay or Deferral, Exceptions, Exemptions, and Waiver. 39 A.L.R.6th 577.

CASE NOTES

Registration Proper.

Trial court abided by the prohibition contained in this section not to consider a juvenile's refusal to admit the offense because although the trial court did mention the juvenile's refusal to admit that he raped his cousin, it expressly stated that it did not take that fact into consideration

in deciding whether the juvenile was to register as a juvenile sex offender; instead, the trial court focused on that portion of the Community Notification Risk Assessment and testimony indicating that the juvenile failed to make progress in the program specially designed for him that did not require him to admit his transgressions. T.Y.R. v. State, 2010 Ark. App. 475, — S.W.3d — (2010).

Trial court's conclusion that defendant juvenile had to register as a sex offender was not clearly erroneous because the trial court found that the juvenile's prospects for rehabilitation were unlikely; that finding was based on testimony and evidence that, after almost two years, the juvenile had failed to make significant progress in treatment and that the prognosis for his completing the program was poor. T.Y.R. v. State, 2010 Ark. App. 475, — S.W.3d — (2010).

Cited: C.M. v. State, 2010 Ark. App. 695, — S.W.3d — (2010).

9-27-359. Fifteenth-month review hearing.

(a) A hearing shall be held to determine whether the Department of Human Services shall file a petition to terminate parental rights if:

(1) A juvenile has been in an out-of-home placement for fifteen (15) continuous months, excluding trial placements and time on runaway status; and

(2) The goal at the permanency planning hearing was either reunification or Another Planned Permanent Living Arrangement (APPLA).

(b) The circuit court shall authorize the department to file a petition to terminate parental rights unless:

(1)(A)(i) The child is being cared for by a relative or relatives;

(ii) Termination of parental rights is not in the best interest of the child;

(iii) The relative has made a long-term commitment to the child; and

(iv) The relative is willing to pursue adoption, guardianship, or permanent custody of the juvenile; or

(B)(i) The child is being cared for by his or her parent who is in foster care; and

(ii) Termination of parental rights is not in the best interest of the child;

(2)(A) The department has documented in the case plan a compelling reason why filing a petition is not in the best interest of the child; and

(B) The court approves the compelling reason as documented in the case plan; or

(3) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, the services the department deemed necessary for the safe return of the child to the child's home if reunification services were required to be made to the family.

(c) If the court determines the permanency goal to be adoption, the department shall file a petition to terminate parental rights no later than the fifteenth month of the child's entry into foster care.

(d) If the court finds that the juvenile should remain in an out-of-home placement, either long-term or otherwise, the juvenile's case shall be reviewed every six (6) months, with an annual permanency planning hearing.

(e) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

History. Acts 2005, No. 1191, § 5; 2011, No. 793, § 8; 2011, No. 1175, § 10; 2013, No. 1055, § 14.

Amendments. The 2011 amendment by No. 793 redesignated (a)(2)(A) and (B) as (a)(2).

The 2011 amendment by No. 1175 substituted "adoption" for "termination of parental rights" in (c).

The 2013 amendment rewrote (b)(1).

CASE NOTES

Analysis

Appeal.
Failure to Preserve.

Appeal.

Given that this section requires a trial court to authorize a termination of parental rights petition except on limited grounds after 15 months, the trial court's decision to award permanent-relative custody for parents' children, and still provide an opportunity for visitation with the parents, did not constitute error. Anderson v. Ark. Dep't of Human Servs., 2011 Ark. App. 522, 385 S.W.3d 367 (2011).

Failure to Preserve.

As parents failed to appeal prior reasonable-efforts findings regarding reunification services offered to them pursuant to § 9-27-338 and this section, an appellate court was precluded from reviewing those findings for the time periods covered by the prior orders. Anderson v. Ark. Dep't of Human Servs., 2011 Ark. App. 522, 385 S.W.3d 367 (2011).

9-27-363. Foster youth transition.

(a) The General Assembly finds that:

(1) A juvenile in foster care should have a family for a lifetime, but too many juveniles in foster care reach the age of majority without being successfully reunited with their biological families and without the security of permanent homes;

(2) A juvenile in foster care who is approaching the age of majority shall be provided the opportunity to be actively engaged in the planning of his or her future;

(3) The Department of Human Services shall:

(A) Include the juvenile in the process of developing a plan to transition the child into adulthood;

(B) Empower the juvenile with information about all of the options and services available;

(C) Provide the juvenile with the opportunity to participate in services tailored to his or her individual needs and designed to enhance his or her ability to receive the skills necessary to enter adulthood;

(D) Assist the juvenile in developing and maintaining healthy relationships with nurturing adults who can be a resource and positive guiding influences in his or her life after he or she leaves foster care; and

(E) Provide the juvenile with basic information and documentation regarding his or her biological family and personal history.

(b) The department shall develop a transitional plan with every juvenile in foster care not later than the juvenile's seventeenth birthday or within ninety (90) days of entering a foster care program for juveniles who enter foster care at seventeen (17) years of age or older. The plan shall include without limitation written information and confirmation concerning:

(1) The juvenile's right to stay in foster care after reaching eighteen (18) years of age for education, treatment, or work and specific programs and services, including without limitation the John H. Chafee Foster Care Independence Program and other transitional services; and

(2) The juvenile's case, including his or her biological family, foster care placement history, tribal information, if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to a sibling would jeopardize the safety or welfare of the sibling.

(c) The department shall assist the juvenile with:

(1) Completing applications for:

(A) ARKids First, Medicaid, or assistance in obtaining other health insurance;

(B) Referrals to transitional housing, if available, or assistance in securing other housing; and

(C) Assistance in obtaining employment or other financial support;

(2) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and

(3) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as resources to the juvenile based on his or her best interest.

(d) A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally.

(e) Before closing a case, the department shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

(1) Social security card;

(2) Certified birth certificate or verification of birth record, if available or should have been available to the department;

(3) Family photos in the possession of the department;

(4)(A) All of the juvenile's health records for the time the juvenile was in foster care and other medical records that were available or should have been available to the department.

(B) A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private; and

(5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department.

(f) Within thirty (30) days after the juvenile leaves foster care, the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available.

(g) The department shall not request a circuit court to close a family in need of services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section.

(h) The department shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held.

(i) A circuit court shall continue jurisdiction over a juvenile who has reached eighteen (18) years of age to ensure compliance with § 9-28-114.

(j) This section does not limit the discretion of a circuit court to continue jurisdiction for other reasons as provided for by law.

(k) A court may terminate jurisdiction upon a showing that:

(1) The department has complied with this section; or

(2) The juvenile has refused the services.

History. Acts 2009, No. 391, § 1; 2011, No. 591, § 8; 2013, No. 1055, § 15.

A.C.R.C. Notes. ACRC staff has determined that "§ 9-28-114" was meant to be substituted for "this section" in (a), but the word "section" was inadvertently omitted. The word "section" should have been included in the stricken language.

Amendments. The 2011 amendment deleted former (a) through (h) and redesignated former (i)(1) as (a), former (i)(2) as (b), and former (i)(3) through (i)(3)(A) as (c) through (c)(2); substituted "§ 9-28-114" for "this section" in (a); and substituted "Department of Human Services" for "department" in (c)(1).

The 2013 amendment rewrote the section.

9-27-365. No reunification hearing.

(a)(1)(A) Any party can file a motion for no reunification services at any time.

(B) The motion shall be provided to all parties in writing at least twenty (20) days before a scheduled hearing.

(C) The court may conduct a hearing immediately following or concurrent with an adjudication determination or at a separate hearing if proper notice has been provided.

(2) The motion shall identify sufficient facts and grounds in sufficient detail to put the defendant on notice as to the basis of the motion for no reunification services.

(3)(A) A response is not required.

(B) If a party responds, the time for response shall not be later than ten (10) days after receipt of the motion.

(b)(1) The court shall conduct and complete a no reunification hearing within fifty (50) days of the date of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided.

(2) Upon good cause shown, the hearing may be continued for an additional twenty (20) days.

(c) An order terminating reunification services on a party and ending the Department of Human Services' duty to provide services to a party shall be based on a finding of clear and convincing evidence that:

(1) The termination of reunification services is in the child's best interest; and

(2) One (1) or more of the following grounds exist:

(A) A circuit court has determined that the parent has subjected the child to aggravated circumstances that include:

(i) A child being abandoned;

(ii) A child being chronically abused;

(iii) A child being subjected to extreme or repeated cruelty or sexual abuse;

(iv) A determination by a circuit judge that there is little likelihood that services to the family will result in successful reunification; or

(v) A child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person three (3) or more times in the past fifteen (15) months; or

(vi) A child or a sibling being neglected or abused such that the abuse or neglect could endanger the life of the child; or

(B) A circuit court has determined that the parent has:

(i) Committed murder of a child;

(ii) Committed manslaughter of a child;

(iii) Aided or abetted, attempted, conspired, or solicited to commit murder or manslaughter;

(iv) Committed a felony battery that results in serious bodily injury to any child;

(v) Had parental rights involuntarily terminated as to a sibling of the child; or

(vi) Abandoned an infant as defined in § 9-27-303(1).

(d) Upon a determination that no reunification services shall be provided, the court shall hold a permanency planning hearing within thirty (30) days unless permanency for the juvenile has been achieved through guardianship, custody, or a petition for termination of parental rights has been filed within thirty (30) days.

(e) A written order setting forth the court's findings of fact and law shall be filed with the court, by the court, or by a party or party's attorneys as designated by the court within thirty (30) days or before the next hearing, whichever is sooner.

History. Acts 2009, No. 956, § 26; 2013, No. 1055, §§ 16, 17.

Amendments. The 2013 amendment substituted "twenty (20) days" for "fourteen (14) days" in (a)(1)(B); and added (c)(2)(A)(vi).

CASE NOTES

Analysis

Final Judgment Rule.
Findings.

Final Judgment Rule.

As the parents only challenged an order of no-reunification announced at an adjudication hearing and alluded to in an adjudication order, as a no-reunification order was not entered and the adjudication order did not dispose of the issue, there was no final, appealable order terminating reunification services under subsection (a) of this section; accordingly, the appellate court lacked jurisdiction to hear the parents' appeal. Calahan v. Ark. Dep't of Human Servs., 2011 Ark. App. 165, — S.W.3d — (2011).

Findings.

Order terminating reunification services as to a mother's two children was proper because the trial court substantially complied with subdivision (c)(2)(A)(v) of this section by making specific findings that the children had been removed from the mother's custody on three occasions and that the children had been successfully placed with their father and were without need of further services. Coleman v. Ark. Dep't of Human Servs., 2010 Ark. App. 851, 379 S.W.3d 778 (2010).

9-27-367. Court costs, fees, and fines.

(a) The juvenile division of the circuit court may order the following court costs, fees, and fines to be paid by adjudicated defendants to the circuit court juvenile division fund as provided for in § 16-13-326:

(1) The court may assess an adjudicated delinquent court costs not to exceed thirty-five dollars ($35.00) as provided under § 9-27-330(a)(6);

(2) The court may assess an adjudicated family in need of services court costs not to exceed thirty-five dollars ($35.00) as provided under § 9-27-332(a)(8);

(3) The court may order a probation fee for juveniles adjudicated delinquent not to exceed twenty dollars ($20.00) per month as provided under § 9-27-330(a)(5);

(4) The court may order a juvenile service fee for an adjudicated family in need of services not to exceed twenty dollars ($20.00) per month as provided under § 9-27-332(a)(9);

(5) The court may order a fine for adjudicated delinquents of not more than five hundred dollars ($500) as provided under § 9-27-330(a)(8);

(6) The court may order a fine for an adjudicated family in need of services of not more than five hundred dollars ($500) as provided under § 9-27-332(a)(7); and

(7) A juvenile intake or probation officer may charge a diversion fee limited to no more than twenty dollars ($20.00) per month as provided under § 9-27-323.

(b) The court shall direct that the juvenile division court costs and fees be collected, maintained, and accounted for in the same manner as juvenile probation and juvenile services fees as provided for in § 16-13-326.

History. Acts 2011, No. 1175, § 11.

Subchapter 4 — Division of Dependency-Neglect Representation

A.C.R.C. Notes. Acts 2011, No. 923, § 29, provided: "DEPENDENCY-NEGLECT REPRESENTATION APPROPRIATION TRANSFER AUTHORITY. The Administrative Office of the Courts shall receive approval from the Chief Fiscal Officer of the State and Arkansas Legislative Council or Joint Budget Committee to transfer funds and appropriations between Item Numbers (01), (02), (03) (A) and (C) and (06) of Section 10 herein for the payment of employees and/or contractors providing legal services for the Division of Dependency-Neglect Representation. Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Administrative Office of the Courts may operate more efficiently if some flexibility is provided to the Administrative Office of the Courts authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2012, No. 244, § 29, provided: "DEPENDENCY-NEGLECT REPRESENTATION APPROPRIATION TRANSFER AUTHORITY. The Administrative Office of the Courts shall receive approval from the Chief Fiscal Officer of the State and Arkansas Legislative Council or Joint Budget Committee to transfer funds and appropriations between Item Numbers (01), (02), (03) (A) and (C) and (06) of Section 10 herein for the payment of employees and/or contractors providing legal services for the Division of Dependency-Neglect Representation.

"Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Administrative Office of the Courts may operate more efficiently if some flexibility is provided to the Administrative Office of the Courts authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2012 through June 30, 2013."

Acts 2013, No. 159, § 34, provided: "DEPENDENCY-NEGLECT REPRESENTATION APPROPRIATION TRANSFER AUTHORITY. The Administrative Office of the Courts shall receive approval

from the Chief Fiscal Officer of the State and Arkansas Legislative Council or Joint Budget Committee to transfer funds and appropriations between Item Numbers (01), (02), (03) (A) and (C) and (06) of Section 10 herein for the payment of employees and/or contractors providing legal services for the Division of Dependency-Neglect Representation.

"Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums in the appropriation act(s) for a state agency and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization law. Further, the General Assembly has determined that the Administrative Office of the Courts may operate more efficiently if some flexibility is provided to the Administrative Office of the Courts authorizing broad powers under this Section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

9-27-401. Creation — Representation for children and parents.

(a) There is hereby created a Division of Dependency-Neglect Representation within the Administrative Office of the Courts that will be staffed by a court-appointed special advocate coordinator and an attorney coordinator.

(b)(1) The Director of the Administrative Office of the Courts is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.

(2)(A) Before employing or entering into a contract or contracts, the office shall consult with the judge or judges of the circuit court designated to hear dependency-neglect cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April 6, 2001, in each judicial district in accordance with the provisions of § 19-11-1001 et seq.

(B) Those obtaining employment or contracts through the office as described in subdivision (b)(3) of this section will be designated as the providers for representation of children in dependency-neglect cases in each judicial district.

(3)(A) The office shall advertise employment and contract opportunities.

(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Judges Committee of the Arkansas Judicial Council.

(4) The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases.

(5)(A)(i) In the transition to a state-funded system of dependency-neglect representation, it is the intent of the General Assembly to provide an appropriate and adequate level of representation to all children in dependency-neglect proceedings as required under federal and state law pursuant to § 9-27-316.

(ii)*(a)* It is recognized by the General Assembly that in many areas of the state, resources have not been available to support the requirement of representation for children at the necessary level.

(b) It is also recognized, however, that in other areas a system has been developed that is appropriately and successfully serving children and the courts.

(iii) With the transition to state funding, it is not the intent of the General Assembly to adversely affect these systems that are working well or to put into place a system that is too inflexible to respond to local needs or restrictions.

(B) In its administration of the system, therefore, the office is charged with the authority and responsibility to establish and maintain a system that:

(i) Equitably serves all areas of the state;

(ii) Provides quality representation;

(iii) Makes prudent use of state resources; and

(iv) Works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases.

(c) The director is authorized to:

(1) Establish a statewide court-appointed special advocate program;

(2) Provide grants or contracts to local court-appointed special advocate programs; and

(3) Work with judicial districts to establish local programs by which circuit courts may appoint trained volunteers to provide valuable information to the courts concerning the best interests of children in dependency-neglect proceedings.

(d)(1) The director is authorized to establish a program to represent indigent parents or legal custodians in dependency-neglect cases.

(2) The court shall appoint counsel in compliance with federal law, § 9-27-316(h), and Supreme Court Administrative Order Number 15.

(3)(A) Funding for contracts shall be administered from the state, or funds shall be provided to the judicial district for the county to administer the contracts.

(B) All contracts shall be paid from funds appropriated for the purpose of this section.

(4) When a court orders payment of funds for parent counsel on behalf of an indigent parent or custodian from a state contract, the court shall make written findings in the appointment order in compliance with § 9-27-316(h).

(5) The court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(6) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid under this section.

(7) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for indigent parent or custodian representation in dependency-neglect cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the committee.

(8) The office shall not be liable directly to any attorney or indirectly to the Arkansas State Claims Commission for the payment of attorney's fees or expenses except to the extent specific funding is appropriated and available for the purpose of providing indigent parent counsel in dependency-neglect cases.

History. Acts 1997, No. 1227, § 14; 1999, No. 708, § 1; 2001, No. 987, § 6; 2001, No. 1267, § 1; 2003, No. 1166, § 28; 2003, No. 1315, § 1; 2007, No. 587, § 30; 2011, No. 1175, § 12.

A.C.R.C. Notes. Acts 2010, No. 157, § 24, provided: "CONTRACTING WITH PUBLIC DEFENDERS. The Administrative Office of the Courts Division of Dependency-Neglect Representation shall have the authority to enter into a Professional Services Agreement with a person who is serving as a part-time Public Defender or other part-time State Attorney and paid as an employee of the State of Arkansas when the Public Defender or other part-time State Attorney has been appointed to provide Dependency-Neglect Services by a Circuit Judge. The part-time Public Defender or other part-time State Attorney shall be eligible for additional compensation which shall not be construed as exceeding the line item maximum for the grade of that position when the Administrative Office of the Courts reimburses the part-time Public Defender or other part-time State Attorney for Dependency-Neglect Representation services performed.

"The provisions of this section shall be in effect only from July 1, 2010 through June 30, 2011."

Acts 2011, No. 923, § 28, provided: "CONTRACTING WITH PUBLIC DEFENDERS. The Administrative Office of the Courts Division of Dependency-Neglect Representation shall have the authority to enter into a Professional Services Agreement with a person who is serving as a part-time Public Defender or other part-time State Attorney and paid as an employee of the State of Arkansas when the Public Defender or other part-time State Attorney has been appointed to provide Dependency-Neglect Services by a Circuit Judge. The part-time Public Defender or other part-time State Attorney shall be eligible for additional compensation which shall not be construed as exceeding the line item maximum for the grade of that position when the Administrative Office of the Courts reimburses the part-time Public Defender or other part-time State Attorney for Dependency-Neglect Representation services performed.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2012, No. 244, § 28, provided: "CONTRACTING WITH PUBLIC DEFENDERS. The Administrative Office of the Courts Division of Dependency-Neglect Representation shall have the authority to enter into a Professional Services Agreement with a person who is serving as a part-time Public Defender or other part-time State Attorney and paid as an employee of the State of Arkansas when the Public Defender or other part-time State Attorney has been appointed to provide Dependency-Neglect Services by a Circuit Judge. The part-time Public Defender or other part-time State Attorney shall be eligible for additional compensation which shall not be construed as exceeding the line item maximum for the grade of that position when the Administrative Office of the Courts reimburses the part-time Public Defender or other part-time State Attorney for Dependency-Neglect Representation services performed.

"The provisions of this section shall be

in effect only from July 1, 2012 through June 30, 2013."

Acts 2013, No. 159, § 33, provided: "CONTRACTING WITH PUBLIC DEFENDERS. The Administrative Office of the Courts Division of Dependency-Neglect Representation shall have the authority to enter into a Professional Services Agreement with a person who is serving as a part-time Public Defender or other part-time State Attorney and paid as an employee of the State of Arkansas when the Public Defender or other part-time State Attorney has been appointed to provide Dependency-Neglect Services by a Circuit Judge. The part-time Public Defender or other part-time State Attorney shall be eligible for additional compensation which shall not be construed as exceeding the line item maximum for the grade of that position when the Administrative Office of the Courts reimburses the part-time Public Defender or other part-time State Attorney for Dependency-Neglect Representation services performed.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Amendments. The 2011 amendment substituted "legal custodians" for "guardians" or variant in (d)(1) and (d)(7); deleted "in all proceedings to remove custody or to terminate parental rights" at the end of (d)(2); deleted former (d)(3) and redesignated the remaining subdivisions accordingly; and rewrote (d)(4).

9-27-402. Case plans.

(a)(1) A case plan shall be developed in all dependency-neglect cases or any case involving an out-of-home placement.

(2) The case plan developed by the Department of Human Services under § 9-28-111 shall be filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner.

(3) If the department does not have sufficient information before the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available.

(4) All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing;

(b) The case plan is subject to court approval upon review by the court.

(c) The participation of a parent, guardian, or custodian in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect.

History. Acts 1997, No. 1227, § 8; 1999, No. 401, § 16; 2009, No. 956, § 27; 2011, No. 591, § 9.

Amendments. The 2011 amendment deleted the last two sentences of the former introductory paragraph of (a); deleted former (a)(1)(A) through (C); and redesignated former (a)(2)(A) through (C) as (a)(2) through (4); substituted "The case plan developed by the Department of Human Services under § 9-28-111 shall be" for "Developed and" in (a)(2); deleted former (a)(3) and (4); and deleted former (b) and (c) and redesignated former (d) and (e) as (b) and (c).

CASE NOTES

Cited: Ramsey v. Ark. Dep't of Human Servs., 2009 Ark. App. 1365, 377 S.W.3d 399 (2010).

Subchapter 5 — Extended Juvenile Jurisdiction

9-27-501. Extended juvenile jurisdiction designation.

CASE NOTES

Hearings.

Designation of the juvenile for extended juvenile jurisdiction (EJJ) was proper because his contention that the law-of-the-case doctrine barred the juvenile court from conducting an extended juvenile jurisdiction hearing and granting the state's motion for such a designation was rejected. In the criminal case, that court reached no decision and provided no direction to the criminal court with respect to EJJ designation and upon remand the criminal court made no decision regarding EJJ designation; nothing required the criminal court to make a decision on the EJJ issues before the case was transferred to juvenile court. N.D. v. State, 2012 Ark. 265, 383 S.W.3d 396 (2012).

9-27-503. Designation hearing.

CASE NOTES

Analysis

Appeal.
Burden of Proof.

Appeal.

As a juvenile's objection to the failure to have an extended juvenile jurisdiction hearing within 90 days was untimely, as the juvenile waived the right to insist on a timely hearing, and as the juvenile cited no authority as to what principle of fundamental fairness had been violated, there was no penalty for noncompliance with Ark. R. Crim. P. 28.1 under subsection (a) of this section. D.B. v. State, 2011 Ark. App. 151, — S.W.3d — (2011).

Burden of Proof.

Trial court did not err in denying a juvenile's request to transfer his case to the juvenile division under § 9-27-318(g) based on the seriousness of the crimes; the aggressive, willful manner of the crimes; that the offenses were against persons; and the juvenile's sophisticated evasion of capture and non-cooperation. The trial court properly used the clear and convincing burden of proof from § 9-27-318(h)(2) in deciding the juvenile's request, not the preponderance of the evidence standard applicable under subsection (b) of this section. A.I. v. State, 2010 Ark. App. 83, — S.W.3d — (2010).

CHAPTER 28

PLACEMENT OR DETENTION

SUBCHAPTER.

Subchapter 1 — Children and Family Services

SECTION.

9-28-101. Legislative intent and purpose.

The General Assembly recognizes that the state has a responsibility to protect children from abuse and neglect by providing services and supports that promote the safety, permanency, and well-being of the children and families of Arkansas.

History. Acts 2011, No. 591, § 1.

9-28-102. Creation of the Division of Children and Family Services.

There is created the Division of Children and Family Services within the Department of Human Services.

History. Acts 2011, No. 591, § 1.

9-28-103. Division of Children and Family Services — Powers and duties.

(a) The Division of Children and Family Services of the Department of Human Services shall perform the following functions and have the authority and responsibility to:

(1) Coordinate communication between various components of the child welfare system;

(2) Provide services to dependent-neglected children and their families;

(3) Investigate reports of child maltreatment and assess the health, safety, and well-being of the child during the investigation;

(4) Provide services, when appropriate, designed to allow a maltreated child to safely remain in his or her home;

(5) Protect a child when remaining in the home presents an immediate danger to the health, safety, or well-being of the child;

(6) Ensure child placements support the goal of permanency for children when the division is responsible for the placement and care of a child; and

(7) Ensure the health, safety, and well-being of children when the division is responsible for the placement and care of a child.

(b) The division may promulgate rules necessary to administer this subchapter.

History. Acts 2011, No. 591, § 1.

9-28-104. Best interest of the child.

(a) The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children and that our child welfare system needs to be strengthened by establishing a clear policy of the state that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings.

(b) The best interest of the child shall be the standard for recommendations made by employees of the Department of Human Services as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

History. Acts 2011, No. 591, § 1.

9-28-105. Preference to relative caregivers for a child in foster care.

In all custodial placements by the Department of Human Services in foster care or adoption, preferential consideration shall be given to an adult relative over a nonrelated caregiver, if:

(1) The relative caregiver meets all relevant child protection standards; and

(2) It is in the best interest of the child to be placed with the relative caregiver.

History. Acts 2011, No. 591, § 1.

9-28-106. Religious preference — Removal of barriers to interethnic adoption.

(a) The Department of Human Services and any other agency or entity that receives federal assistance and is involved in adoption or foster care placement shall not:

(1) Discriminate on the basis of the race, color, or national origin of either the adoptive parent, foster parent, or the child involved; or

(2) Delay the placement of a child on the basis of race, color, or national origin of the adoptive parent or foster parent.

(b) If a child's genetic parent or parents express a preference for placing the child in a foster home or an adoptive home of the same or a similar religious background to that of the genetic parent or parents, the Department of Human Services shall:

(1) Place the child with a family that meets the genetic parent's religious preference; or

(2) If a family with the same or a similar religious background is not available, to a family of a different religious background that is knowledgeable and appreciative of the child's religious background.

History. Acts 2011, No. 591, § 1.

9-28-107. Notice when juvenile transferred to custody of department.

(a) The Department of Human Services shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of a juvenile transferred to the custody of the department.

(b) The notice provided under this subsection shall:

(1) Be provided within thirty (30) days after the juvenile is transferred to the custody of the department; and

(2) Include adult grandparents or adult relatives suggested by the parent or parents of the juvenile.

(c) The department is not required to provide notice under subsection (b) of this section to an adult grandparent or other adult relative if the adult grandparent or other adult relative has:

(1) A pending charge or past conviction or plea of guilty or nolo contendere for family or domestic violence; or

(2) A true finding of child maltreatment in the Child Maltreatment Central Registry.

(d) The notice required under subsection (b) of this section shall state:

(1) That the juvenile has been or is being removed from the parent;

(2) The option to participate in the:

(A) Care of the child;

(B) Placement with the child; and

(C) Visitation with the child.

(3) That failure to respond to the notice may result in loss of options listed under subdivision (d)(2) of this section;

(4) The requirements to become a provisional foster home and the additional services and supports that are available for children in a foster home; and

(5) That if kinship guardianship is available, how the relative could enter into a kinship guardianship agreement with the department.

(e) The department may provide notice of a juvenile transferred to the custody of the department to persons who have a strong, positive emotional tie to the juvenile and have a positive role in the juvenile's life but are not related by blood, adoption, or marriage.

History. Acts 2011, No. 591, § 1.

9-28-108. Placement of juveniles.

(a) As used in this section:

(1) "Fictive kin" means a person not related to a child by blood or marriage, but who has a strong positive emotional tie to the child and has a positive role in the child's life, such as a godparent, neighbor, or family friend; and

(2) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption.

(b)(1)(A) After the Department of Human Services removes a juvenile or the circuit court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency, as defined under § 9-28-402.

(B) For a juvenile placed out of state, the placement shall be approved under the Interstate Compact on the Placement of Children, § 9-29-201 et seq.

(2) When it is in the best interest of each of the juveniles, the department shall attempt to place:

(A) A sibling group together while they are in foster care and adoptive placement; and

(B) An infant of a minor mother together with the minor mother in foster care.

(c)(1) A relative of a juvenile placed in the custody of the department shall be given preferential consideration for placement if:

(A) The relative meets all required child protection standards; and

(B) It is in the best interest of the juvenile to be placed with the relative.

(2) Placement or custody of a juvenile in the home of a relative or other person shall not relieve the department of its responsibility to actively implement the goal of the case.

(3) If a relative or other person inquires about the placement of a juvenile in his or her home, the department shall discuss the following two (2) options with the relative or other person considering the placement of the juvenile:

(A) Becoming a department foster home; or

(B) Obtaining legal custody of the juvenile.

(4)(A) The juvenile shall remain in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined under § 9-28-402 until:

(i) The home is opened as a regular foster home;

(ii) The home is opened as a provisional foster home, if the person is a relative or fictive kin to one (1) of the children in the sibling group, including step-siblings; or

(iii) The court grants custody of the juvenile to the relative or fictive kin after a written approved home study is presented to the court.

(B) For placement with a relative or fictive kin:

(i) The juvenile and his or her siblings or step-siblings may be placed in the home of a relative or fictive kin of the juvenile on a provisional basis no more than six (6) months pending the home of the relative or fictive kin being opened as a regular foster home;

(ii) If the relative or fictive kin chooses to have his or her home opened as a provisional foster home, the relative or fictive kin shall not be paid a board payment until:

(a) The relative or fictive kin meets all of the foster home requirements; and

(b) The home of the relative or fictive kin is opened as a regular foster home;

(iii) The relative or fictive kin may apply for and receive benefits that the relative or fictive kin may be entitled to based on the placement of the juvenile in the home, such as benefits under the Transitional Employment Assistance Program, § 20-76-401, and Supplemental Nutrition Assistance Program (SNAP), until the home of the relative or fictive kin is opened as a regular foster home; and

(iv) If the home of the relative or fictive kin is not fully licensed as a foster home after six (6) months of the placement of the juvenile and any siblings or step-siblings in the home:

(a) The department shall remove the juvenile and any siblings or step-siblings from the relative or fictive kin's home and close the provisional foster home of the relative or fictive kin; or

(b) The court shall remove custody of the juvenile and any siblings or step-siblings from the department and grant custody to the relative or fictive kin subject to the limitations outlined in subdivision (c)(5) of this section.

(5) If the court grants custody of the juvenile and any siblings or step-siblings to the relative or other person:

(A)(i) The juvenile and any siblings or step-siblings shall not be placed back in the custody of the department while remaining in the home of the relative or other person.

(ii) The juvenile and any siblings or step-siblings shall not be removed from the custody of the relative or other person, placed in the custody of the department, and then remain or be returned to the home of the relative or other person while remaining in the custody of the department;

(B) The relative or other person shall not receive any financial assistance, including board payments, from the department, but may receive other financial assistance that the relative or other person has applied for and qualifies for under other program guidelines, such as the Transitional Employment Assistance Program, § 20-76-401, food stamps, Medicaid, and the federal adoption subsidy; and

(C) The department shall not be ordered to pay the equivalent of board payments or adoption subsidies to a relative or other person as reasonable efforts to prevent removal of custody from the relative.

(d)(1) A juvenile who is in the custody of the department shall be allowed to have a trial placement with the juvenile's parents or the

person from whom custody was removed for a time period not to exceed sixty (60) days.

(2) After sixty (60) days, the court shall either:

(A) Place custody of the juvenile with the parents or the person from whom custody was removed; or

(B) Remove the juvenile from the parent or person from whom custody was removed and return the juvenile to the department for placement in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402(12).

(e) When a juvenile leaves the custody of the department and the court grants custody to the parent or another person, the department shall not be the legal custodian of the juvenile, even if the juvenile division of circuit court retains jurisdiction.

History. Acts 2011, No. 591, § 1; 2013, No. 478, §§ 2, 3.

Amendments. The 2013 amendment rewrote (a); inserted "or fictive kin" throughout (c)(4); and substituted "Supplemental Nutrition Assistance Program (SNAP)" for "food stamps" in (c)(4)(B)(iii).

9-28-109. Notice of move in foster care placement.

(a) The policy of the State of Arkansas is that each child placed in the custody of the Department of Human Services should have stable placements.

(b)(1) To reduce the number of placements of children in foster care, if a foster parent requests a foster child be removed from his or her home at any time, excluding an emergency that places the child or a family member at risk of harm, then the foster parent shall attend a staffing that shall be arranged by the Division of Children and Family Services of the Department of Human Services within forty-eight (48) hours to discuss what services or assistance is needed to stabilize the placement.

(2) The foster child, the child's attorney ad litem, and a court-appointed special advocate, if appointed, shall be notified so that they may attend and participate in the staffing and planning for the placement of the child.

(3) If the placement cannot be stabilized, the foster parent shall continue to provide for the foster child for up to five (5) business days until an appropriate alternative placement is located.

(c)(1) Other changes in placement shall be made only after notification to the:

(A) Foster child;

(B) Foster parent or parents;

(C) Child's attorney ad litem;

(D) Child's birth parents; and

(E) Court having jurisdiction over the child.

(2) The notices shall:

(A) Be sent in writing two (2) weeks before the proposed change in placement unless the current placement is a temporary placement under subdivision (d)(1) of this section;

(B) State the reasons that justify the proposed change in placement;

(C) Convey to the attorney ad litem the address of the proposed new foster home or placement provider; and

(D) Convey to the child the name and telephone number of his or her attorney ad litem and a statement that if the child objects to the change in placement, the attorney ad litem may be able to assist the child in challenging the change in placement.

(d)(1) Exceptions to the advance notice requirement shall be made if the:

(A) Health or welfare of the child would be endangered by delaying a change in placement; or

(B) Child is placed in a placement intended to be temporary until a stable placement can be located for the child in accordance with department policy.

(2) Within twenty-four (24) hours of the change in placement the department shall:

(A) Notify the birth parent of the change;

(B) Notify the child's attorney ad litem of the change; and

(C) Provide the attorney ad litem with the name, address, and telephone number of the new foster care home or placement provider.

(3) Within seventy-two (72) hours of the change in placement, the department shall provide written notice to the attorney ad litem stating the specific reasons justifying the change of placement without advance notice.

(e)(1) If an agent, employee, or contractor of the department fails to comply with this section, an action for violation of this section may be filed with the court by any party to the action against the person who failed to comply with this section with the assessment of punishment to be determined by the court.

(2) If the court finds that the agent, employee, or contractor of the department failed to comply with this section, then the court may order the department or the agent, employee, or contractor to pay all the costs of the proceedings brought under this section.

History. Acts 2011, No. 591, § 1.

9-28-110. Smoking in the presence of foster children.

The Department of Human Services shall not place or permit a child to remain in a foster home, unless it is in the best interest of the child to be placed in or to remain in the foster home, if the foster parent:

(1) Or any other member of the household smokes; or

(2) Allows an individual to smoke in the presence of a foster child.

History. Acts 2011, No. 591, § 1.

9-28-111. Case plans.

(a) The Department of Human Services shall be responsible for developing case plans in all dependency-neglect cases and in family-in-need-of-services cases when custody is transferred to the department under § 9-27-328. The case plan shall be:

(1)(A) Developed in consultation with the juvenile's parent, guardian, or custodian and, if appropriate, the juvenile, the juvenile's foster parents, the court-appointed special advocate, the juvenile's attorney ad litem, and all parties' attorneys.

(B) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document the parents' unwillingness or inability to participate and provide a copy of the written documentation to the parent, if available. The department shall then prepare a case plan conforming as nearly as possible with the requirements set forth in this section.

(C) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan;

(2)(A) Developed and filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner.

(B) If the department does not have sufficient information before the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available.

(C) All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing;

(3) Signed by and distributed to all parties and distributed to the juvenile's attorney ad litem, court-appointed special advocate, and foster parents, if available; and

(4)(A) Subject to modification based on changing circumstances.

(B) All parties to the case plan shall be notified of any substantive change to the case plan.

(C) A substantive change to a case plan includes without limitation a change in the placement of the juvenile, the visitation rights of any party, or the goal of the case plan.

(b) When a juvenile is receiving services in the home of the parent, guardian, or custodian, the case plan shall include the requirements listed in subsection (a) of this section and:

(1) A description of the problems being addressed;

(2) A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;

(3) A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., to assure to all the parents meaningful access to reunification and family preservation services;

(4) The name of an individual who the petitioner, parent, guardian, or custodian knows is claiming to be or who is named as the father or

possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and

(5) A description of how the health and safety of the juvenile will be protected.

(c) When a juvenile is receiving services in an out-of-home placement, the case plan must include the requirements in subsections (a) and (b) of this section and:

(1)(A) A description of the permanency goal.

(B) If adoption is not the goal at the permanency planning and fifteenth-month hearing, the department shall document in the case plan a compelling reason why filing a petition to terminate parental rights is not in the best interest of the juvenile;

(2) The specific reasons for the placement of the juvenile outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian that required removal of the juvenile and the remediation of which will determine the return of the juvenile to the home;

(3) A description of the type of out-of-home placement selected for the juvenile, including a discussion of the appropriateness of the placement;

(4) A plan for addressing the needs of the juvenile while in the placement, with emphasis on the health, safety, and well-being of the juvenile, including a discussion of the services provided over the previous six (6) months;

(5)(A) The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the time period during which the specific actions are to be taken.

(B) The plan may include any person or agency who agrees to be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile;

(6) The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the time period the juvenile is in the out-of-home placement;

(7) The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the time period the juvenile is in placement and a timetable for providing the services, the purposes of which are to promote a continuous and stable living environment for the juvenile, promote family autonomy, strengthen family life when possible, and promote the reunification of the juvenile with the parent, guardian, or custodian;

(8) To the extent available and accessible, the health and education records of the juvenile, under 42 U.S.C. § 675(1);

(9) A description of the financial support obligation to the juvenile, including health insurance of the parent, parents, or guardian of the juvenile;

(10)(A) A description of the location of siblings.

(B) Documentation of the efforts made to place siblings removed from their home in the same placement, unless the department

documents that a joint placement would be contrary to the safety or well-being of any of the siblings; and

(C) Documentation of the efforts made to provide for frequent visitation or other ongoing interaction between the siblings in the case of siblings removed from their home who are not placed together, unless the department documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

(11) When appropriate for a juvenile sixteen (16) years of age and over, the case plan shall include a written description of the programs and services that will help the juvenile prepare for the transition from foster care to independent living;

(12) A written notice to the parent or parents that failure of the parent or parents to substantially comply with the case plan may result in the termination of parental rights and that a material failure to substantially comply may result in the filing of a petition for termination of parental rights sooner than the compliance periods stated in the case plan;

(13)(A) A plan for ensuring the placement of the child in foster care that takes into account the appropriateness of the current educational setting and the proximity of the school in which the child is enrolled at the time of placement, as required under § 9-27-103 [Repealed]; and

(B)(i) An assurance that the department has coordinated with appropriate local educational agencies to ensure that the child remains at the school where the child is enrolled at the time of placement; or

(ii) If remaining at the school is not in the best interest of the child, assurances by the department and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the new school; and

(C)(i) An assurance that each child who has attained the minimum age for compulsory school attendance is a full-time elementary or secondary school student or has completed secondary school.

(ii) For purposes of this section, "elementary or secondary school student" means, with respect to a child, that the child is:

(a) Enrolled, or in the process of enrolling, in a public elementary or secondary school;

(b) Home schooled under § 6-15-501 et. seq.;

(c) Enrolled in a private elementary or secondary school; or

(d) Incapable of attending school on a full-time basis due to the medical condition of the child, and the medical condition incapability is supported by regularly updated information in the case plan; and

(14) The department, in conjunction with other representatives of the juvenile, shall provide the juvenile with assistance and support in developing a transition plan that is personalized at the direction of the juvenile and includes specific options on housing, health insurance,

educational opportunities, local opportunities for mentors and continuing support services, and workforce supports and employment services, and is as detailed as the juvenile may elect as required under § 9-27-363.

(d) The case plan is subject to court review and approval.

(e) The participation of a parent, guardian, or custodian in the development of a case plan or the acceptance of a case plan shall not constitute an admission of dependency-neglect.

History. Acts 2011, No. 591, § 1.

9-28-112. Foster children and educational issues.

(a) The Department of Human Services and school districts shall work together for the best interest of any child placed in the custody of the department.

(b) By the next business day after the department exercises a seventy-two-hour hold on a child or a court places custody of a child with the department, the department shall inform the child's current school district, regardless of whether the child remains at his or her current school, that:

(1) The department has exercised a seventy-two-hour hold on the child; or

(2) The court has placed the child in the custody of the department.

(c) By the next business day after a foster child transfers to a new placement, the department shall notify the child's current school that the foster child has transferred to a new placement.

(d) By the next business day after the department reasonably believes that a foster child has experienced a traumatic event, the department may notify the school counselor of the child that the department reasonably believes that the foster child has experienced a traumatic event.

(e) By the next business day after the department knows that a foster child has experienced a traumatic event through an investigation or an ongoing protective services case, the department may notify the school counselor of the child of the traumatic event that the department has knowledge of through an investigation or an ongoing protective services case.

(f) The school counselor of the child may share information reported to the counselor under subsections (d) and (e) of this section with the school principal and the teachers of the child, if appropriate.

(g)(1) The department or its designee, who may be a foster parent, shall make educational decisions for a child in the custody of the department related to general educational matters, subject to limitation only by the court having jurisdiction of the custody matter.

(2) For educational matters under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., a foster parent may make decisions for a child in the custody of the department.

History. Acts 2011, No. 591, § 1.

9-28-113. Continuity of educational services to foster children.

(a)(1)(A) It is the intent of the General Assembly that each child in foster care is:

(i) Entitled to the same opportunities to meet the academic achievement standards to which all children are held;

(ii) Assisted so that the child can remain in his or her current school;

(iii) Placed in the least restrictive educational placement; and

(iv) Given the same access to academic resources, services, and extracurricular enrichment activities as all other children.

(B) Decisions regarding the education of a child in foster care shall be based on what is in the best interest of the child.

(2)(A) Individuals directly involved in the care, custody, and education of a foster child shall work together to ensure continuity of educational services to the foster child, including without limitation:

(i) Educators;

(ii) The Department of Human Services;

(iii) The Department of Education;

(iv) The circuit court presiding over the foster care case;

(v) Providers of services to the foster child;

(vi) Attorneys;

(vii) Court-appointed special advocates; and

(viii) Parents, guardians, or any persons appointed by the court.

(B) The individuals in subdivision (a)(2)(A) of this section shall ensure the continuity of educational services so that a foster child:

(i) Can remain in his or her current school whenever possible;

(ii) Is moved to a new school in a timely manner when it is necessary, appropriate, and in the best interest of the child under this section;

(iii) Can participate in the appropriate educational programs; and

(iv) Has access to the academic resources, services, and extracurricular enrichment activities that are available to all students.

(b)(1) A foster child shall have continuity in his or her educational placements.

(2) The Department of Human Services shall consider continuity of educational services and school stability in making foster placement decisions.

(3) The school district shall allow the foster child to remain in the child's current school and continue the child's education unless the court finds that the placement:

(A) Is not in the best interest of the child; and

(B) Conflicts with any other provision of current law, excluding the residency requirement under § 6-18-202.

(4) The school district is encouraged to arrange for transportation for the child to enable him or her to remain in his or her current school if reasonable and practical.

(5) Except for emergencies, before making a recommendation to move a child from his or her current school, the Department of Human Services shall state the basis for the recommended school change and how it serves the best interest of the child in a written statement to the following:

(A) The foster child;

(B) The child's attorney ad litem;

(C) The court-appointed special advocate, if appointed; and

(D) Parents, guardians, or any person appointed by the court.

(6)(A) If the court transfers custody of a child to the Department of Human Services, the court shall issue an order containing the following determinations regarding the educational issues of the child and whether the parent or guardian of the child may:

(i) Have access to the child's school records;

(ii) Obtain information on the current placement of the child, including the name and address of the child's foster parent or provider, if the parent or guardian has access to the child's school records; and

(iii) Participate in school conferences or similar activities at the child's school.

(B) If the court transfers custody of a child to the Department of Human Services, the court may appoint an individual to consent to an initial evaluation of the child and serve as the child's surrogate parent under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on February 1, 2007.

(c)(1) Each school district shall identify a foster care liaison.

(2) Each school district shall forward the name of each foster care liaison and the contact information to the Special Education Section of the Department of Education at the beginning of each school year.

(3) The foster care liaison shall:

(A) Ensure and facilitate the timely school enrollment of each foster child;

(B) Assist a foster child who transfers between schools by ensuring the transfer of credits, records, grades, and any other relevant school records; and

(C)(i) Expedite the transfer of records.

(ii) When a foster child changes school placement, the foster care liaison in the new school district shall request the child's educational record, as defined by the Department of Education's regulation, from the foster care liaison in the child's previous school district within three (3) school days.

(iii) The foster care liaison from the previous school district shall provide all relevant school records to the foster care liaison at the new school district within ten (10) school days of receipt of the request under subdivision (c)(3)(C)(ii) of this section.

(d)(1) If a foster child is subject to a school enrollment change, the foster child's caseworker shall contact the school district foster care liaison within two (2) business days, and the new school must imme-

diately enroll the foster child even if the foster child is unable to provide the required clothing or required records, including without limitation:

(A) Academic records;

(B) Medical records; or

(C) Proof of residency.

(2) The Department of Human Services shall provide all known information to the school district that impacts the health and safety of the child being enrolled or other children in the school.

(e)(1) A school district shall recognize the rights of a foster parent to make educational decisions for a foster child under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., if the foster parent is qualified.

(2) A foster parent may have educational rights with respect to consenting to the individualized educational program and related services if the court has specifically limited the educational rights of the parent and the child is in foster care.

(f) The grades of a child in foster care shall not be lowered due to absence from school due to:

(1) A change in the child's school enrollment;

(2) The child's attendance at a dependency-neglect court proceeding; or

(3) The child's attendance at court-ordered counseling or treatment.

(g) Each school district shall accept credit course work when the child demonstrates that the child has satisfactorily completed the appropriate educational placement assessment.

(h) If a child completes the graduation requirements of the child's school district while being detained in a juvenile detention facility or while being committed to the Division of Youth Services of the Department of Human Services, the school district that the child last attended before the child's detention or commitment shall issue the child a diploma.

(i) This section shall not be interpreted to be in conflict with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and regulations promulgated.

(j) Notwithstanding any of the provisions of this section, if it is in the best interest of the child, a foster child may be placed in a nonpublic school, including a private, parochial, or home school as long as no state or federal funding is used for the placement.

History. Acts 2011, No. 591, § 1.

9-28-114. Foster youth transition.

(a) The General Assembly finds that:

(1) Each juvenile in foster care should have a family for a lifetime, but too many juveniles in foster care reach the age of majority without being successfully reunited with their biological families and without the security of permanent homes;

(2) A child in foster care who is approaching the age of majority shall be provided the opportunity to be actively engaged in the planning of his or her future;

(3) The Department of Human Services shall:

(A) Include the child in the process of developing a plan to transition the child into adulthood;

(B) Empower the child with information about all of the options and services available;

(C) Provide the child with the opportunity to participate in services tailored to his or her individual needs and designed to enhance his or her ability to receive the skills necessary to enter adulthood;

(D) Assist the child in developing and maintaining healthy relationships with nurturing adults who can be resources and positive guiding influences in his or her life after he or she leaves foster care; and

(E) Provide the child with basic information and documentation regarding his or her biological family and personal history.

(b) The department shall develop a transitional plan with every juvenile in foster care not later than the juvenile's seventeenth birthday or within ninety (90) days of entering a foster care program for juveniles who enter foster care at seventeen (17) years of age or older. The plan shall include without limitation written information and confirmation concerning:

(1) The juvenile's right to stay in foster care after reaching eighteen (18) years of age for education, treatment, or work and specific programs and services, including without limitation the John H. Chafee Foster Care Independence Program and other transitional services; and

(2) The juvenile's case, including his or her biological family, foster care placement history, tribal information, if applicable, and the whereabouts of siblings, if any, unless a court determines that release of information pertaining to a sibling would jeopardize the safety or welfare of the sibling.

(c) The department shall assist the juvenile with:

(1) Completing applications for:

(A) ARKids First, Medicaid, or assistance in obtaining other health insurance;

(B) Referrals to transitional housing, if available, or assistance in securing other housing; and

(C) Assistance in obtaining employment or other financial support;

(2) Applying for admission to a college or university, to a vocational training program, or to another educational institution and in obtaining financial aid, when appropriate; and

(3) Developing and maintaining relationships with individuals who are important to the juvenile and who may serve as resources to the juvenile based on his or her best interest.

(d) A juvenile and his or her attorney shall fully participate in the development of his or her transitional plan, to the extent that the juvenile is able to participate medically and developmentally.

(e) Before closing a case, the department shall provide a juvenile in foster care who reaches eighteen (18) years of age or before leaving foster care, whichever is later, his or her:

(1) Social Security card;

(2) Certified birth certificate or verification of birth record, if available or should have been available to the department;

(3) Family photos in the possession of the department;

(4)(A) All of the juvenile's health records for the time the juvenile was in foster care and any other medical records that were available or should have been available to the department.

(B) A juvenile who reaches eighteen (18) years of age and remains in foster care shall not be prevented from requesting that his or her health records remain private; and

(5) All of the juvenile's educational records for the time the juvenile was in foster care and any other educational records that were available or should have been available to the department.

(f) Within thirty (30) days after the juvenile leaves foster care, the department shall provide the juvenile a full accounting of all funds held by the department to which he or she is entitled, information on how to access the funds, and when the funds will be available.

(g) The department shall not request a circuit court to close a family in need of services case or dependency-neglect case involving a juvenile in foster care until the department complies with this section.

(h) The department shall provide notice to the juvenile and his or her attorney before a hearing in which the department or another party requests a court to close the case is held.

History. Acts 2011, No. 591, § 1.

9-28-115. Immunity.

(a) A foster parent approved by a child placement agency licensed by the Department of Human Services shall not be liable for:

(1) Damages caused by a foster child; or

(2) Injuries to a foster child caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

(b) A volunteer approved by the department to transport a foster child or client of the department or to supervise visits at the request of the department shall not be liable to a foster child, the client, or the parent or guardian of a foster child for injuries to a foster child or client caused by the acts or omissions of a volunteer unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

(c) An approved volunteer who performs home studies without compensation shall have immunity from liability as provided for state officers and employees under § 19-10-305. As used in this subsection, "approved volunteer" means a volunteer approved by:

(1) The department; and

(2) Any organization operating under a memorandum of understanding with the department for the completion of home studies.

History. Acts 2011, No. 591, § 1.

9-28-116. Restrictions on foster and adoptive parents.

(a) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Department of Arkansas State Police at a minimum of every two (2) years for convictions of the offenses listed in this subchapter and in § 9-28-409.

(b) A child in the custody of the department shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation for convictions of the offenses listed in this subchapter and in § 9-28-409.

(c) A foster child in the custody of the department, or a foster child in the custody of another state, shall not be placed in the home of any Arkansas foster or adoptive parent if the criminal records check reveals a felony conviction for:

(1) Child abuse or neglect;

(2) Spousal abuse or domestic battery;

(3) A crime against children, including child pornography;

(4) A crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or

(5) Aggravated assault on a family or household member.

(d) A foster child in the custody of the department, or a foster child in the custody of another state, shall not be placed in the home of any foster or adoptive parent if the criminal record check reveals a felony conviction for physical assault, battery, or a drug-related offense if the offense was committed within the past five (5) years.

History. Acts 2011, No. 591, § 1.

9-28-117. Authority to obtain local criminal background checks.

(a) Local law enforcement shall provide the Department of Human Services with criminal background information on persons who have applied to be a provisional foster home, a regular foster home, or an adoptive home for the department upon request from the department.

(b) Local law enforcement shall provide the department with criminal background information on persons whose home is being studied by the department upon request from the department.

History. Acts 2011, No. 591, § 1.

9-28-118. Training hours for employees.

All division caseworkers, supervisors, and area directors shall have at least one (1) hour of annual training on issues related to:

(1) Separation and placement; and

(2) The grief and loss that children experience in foster care with multiple placements.

History. Acts 2011, No. 591, § 1.

9-28-119. Department of Human Services — Power to obtain information.

(a) As used in this section:

(1) "Business" means any corporation, partnership, cable television company, association, individual, or utility company that is organized privately, as a cooperative, or as a quasi-public entity, and labor or other organization maintaining an office, doing business, or having a registered agent in the State of Arkansas;

(2) "Financial entity" means any bank, trust company, savings and loan association, credit union, or insurance company or any corporation, association, partnership, or individual receiving or accepting money or its equivalent on deposit as a business in the State of Arkansas;

(3) "Information" means, without limitation, the following:

(A) The full name of a parent, a putative father, or relative;

(B) The social security number of a parent or a putative father;

(C) The date of birth of a parent, a putative father, or relative;

(D) The last known mailing address and residential address of a parent, a putative father, or relative; and

(E) The amount of wages, salaries, earnings, or commissions earned by a parent or a putative father;

(4) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

(5) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile and who claims or is alleged to be the biological father of the juvenile;

(6) "Relative" means an adult grandparent, adult aunt, or adult uncle of the child; and

(7) "State or local government agency" means a department, a board, a bureau, a commission, an office, or other agency of this state or any local unit of government of this state.

(b)(1) The Department of Human Services may request and receive information from the Federal Parent Locator Service, from available records in other states, territories, and the District of Columbia, from

the records of all state agencies, and from businesses and financial entities for the purpose of locating a parent, a putative father, or a relative and for the purpose of determining resources of a parent or a putative father.

(2) The Director of the Department of Human Services may enter into cooperative agreements with other state agencies, businesses, or financial entities to provide direct online access to data information terminals, computers, or other electronic information systems.

(3) State and local government agencies, businesses, and financial entities shall provide information, if known or chronicled in their business records, notwithstanding any other provision of law making the information confidential.

(4) In addition, the Department of Human Services may, under an agreement with the Secretary of the United States Department of Health and Human Services, or his or her designee, request and receive from the Federal Parent Locator Service information authorized under 42 U.S.C. § 653, for the purpose of determining the whereabouts of a parent or child. This information may be requested and received when it is to be used to locate the parent or child for the purpose of enforcing a state or federal law with respect to the unlawful taking or restraining of a child or for the purpose of making or enforcing a child custody determination.

(c) Any business or financial entity that has received a request from the Department of Human services as provided by subsection (b) of this section shall further cooperate with the Department of Human Services in discovering, retrieving, and transmitting information contained in the business records that would be useful in locating absent parents or relatives and shall provide the requested information or a statement that any or all of the requested information is not known or available to the business or financial entity. This shall be done within thirty (30) days of receipt of the request, or the business or financial entity shall be liable for civil penalties of up to one hundred dollars ($100) for each day after the thirty-day period in which it fails to provide the requested information.

(d) Any business or financial entity or any officer, agent, or employee of the business or financial entity participating in good faith and providing information requested under this section shall be immune from liability and suit for damages that might otherwise result from the release of the information to the Department of Human Services.

(e) Any information obtained under the provisions of this section shall become a business record of the Department of Human Services, subject to the privacy safeguards set out in § 9-28-407.

History. Acts 2011, No. 591, § 1.

9-28-120. Public disclosure of information on deaths and maltreatment.

(a)(1) The Department of Human Services shall place a notice on the department's web page when a fatality or near fatality of a child is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq., within seventy-two (72) hours of receipt of a report from the Child Abuse Hotline.

(2) The notice of a reported fatality or near fatality of a child shall state the:

(A) Age, race, and gender of the child;

(B) Date of the child's death or incident;

(C) Allegations or preliminary cause of death or incident;

(D) County and type of placement of the child at the time of incident;

(E) Generic relationship of the alleged offender to the child;

(F) Agency conducting the investigation;

(G) Legal action by the department; and

(H) Services offered or provided by the department presently and in the past.

(3) The notice of a fatality of a child shall also include the name of the child.

(4) The department shall not put on the web page any:

(A) Information on siblings of the child; or

(B) Attorney-client communications.

(5) The department may elect not to place notice on the department's web page if:

(A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and

(B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.

(b)(1) Upon request, the department shall release the following information to the general public when a Child Abuse Hotline report is received on a child in the custody of the department, and the department may identify if the child maltreatment act or omission occurred before or after the child was placed in the custody of the department:

(A) Age, race, and gender of the child;

(B) Allegations of maltreatment;

(C) County and placement of the child at the time of the incident;

(D) Generic relationship of the alleged offender to the child; and

(E) Action taken by the department.

(2) The department shall not release:

(A) Information on siblings of the child; or

(B) Attorney-client communications.

(3) The department shall not release any information if:

(A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and

(B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.

(c)(1) Upon request, the department shall release the following information when a child dies if that child was in an out-of-home placement as defined under § 9-27-303(39):

(A) Age, race, and gender of the child;

(B) Date of the child's death;

(C) Preliminary cause of death;

(D) County and type of placement of the child at the time of the incident; and

(E) Action by the department.

(2) The department shall not release:

(A) Information on siblings of the child; or

(B) Attorney-client communications.

(3) The department shall not release any information if:

(A) A law enforcement agency is actively investigating a case that is subject to the notice provisions of this section; and

(B) The law enforcement agency reasonably believes that the investigation will result in the subsequent arrest of a person.

History. Acts 2011, No. 591, § 1; 2013, No. 1181, § 1.

Amendments. The 2013 amendment inserted "type of" before "placement" in (a)(2)(D) and (c)(1)(D); and added "and the department . . . custody of the department" at the end of the introductory language of (b)(1).

Subchapter 4 — Child Welfare Agency Licensing Act

Effective Dates. Acts 2011, No. 522, § 23: Mar. 21, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current child welfare agency licensing act is in urgent need of updating; that certain provisions of the act are unworkable and unclear, making it difficult of fulfill the purpose of the act; and that this act is immediately necessary for the Department of Human Services to carry out its duties with regard to child welfare agency licensing. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

9-28-402. Definitions.

As used in this subchapter:

(1) "Adoptive home" means a household of one (1) or more persons that has been approved by a licensed child placement agency to accept a child for adoption;

(2) "Adverse action" means any petition by the Department of Human Services before the Child Welfare Agency Review Board to take any of the following actions against a licensee or applicant for a license:

(A) Revocation of license;

(B) Suspension of license;

(C) Conversion of license from regular or provisional status to probationary status;

(D) Imposition of a civil penalty;

(E) Denial of application; or

(F) Reduction of licensed capacity;

(3) "Alternative compliance" means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a regulation, provided that the licensee has demonstrated how an alternate plan of compliance will meet or exceed the intent of the regulation;

(4) "Board" means the Child Welfare Agency Review Board;

(5) "Boarding school" means an institution that is operated solely for educational purposes and that meets each of the following criteria:

(A) The institution is in operation for a period of time not to exceed the minimum number of weeks of classroom instruction required of schools accredited by the Department of Education;

(B) The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year round, except that this provision does not apply to students from foreign countries; and

(C) The parents of children placed in the institution retain custody and planning and financial responsibility for the children;

(6) "Child" means a person who is:

(A) From birth to eighteen (18) years of age; or

(B) Adjudicated dependent-neglected, dependent, or a member of a family in need of services before eighteen (18) years of age and for whom the juvenile division of a circuit court retains jurisdiction under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(7) "Child placement agency" means a child welfare agency, not including any person licensed to practice medicine or law in the State of Arkansas, that engages in any of the following activities:

(A) Places a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(B) Plans for the placement of a child into a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter; or

(C) Assists the placement of a child in a foster home, adoptive home, or any type of facility licensed or exempted by this subchapter;

(8) "Child welfare agency" means any person, corporation, partnership, voluntary association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, whether established for profit or otherwise, that engages in any of the following activities:

(A) Receives a total number of six (6) or more unrelated minors for care on a twenty-four-hour basis for the purpose of ensuring the minors receive care, training, education, custody, or supervision, whether or not there are six (6) or more children cared for at any single physical location;

(B) Places any unrelated minor for care on a twenty-four-hour basis with persons other than themselves; or

(C) Plans for or assists in the placements described in subdivision (8)(B) of this section;

(9)(A) "Class A violation" means a violation of an essential standard, including any of those governing fire, health, safety, nutrition, staff-to-child ratio, and space.

(B) Operation of an unlicensed child welfare agency shall also be a Class A violation unless specifically exempted as provided in this subchapter;

(10) "Class B violation" means any other violation of a standard that is not a Class A violation;

(11) "Emergency child care" means any residential child care facility that provides care to children on a time-limited basis, not to exceed ninety (90) days;

(12) "Exempt child welfare agency" means any person, corporation, partnership, voluntary association or other entity, whether established for profit or otherwise, that otherwise fits the definition of a child welfare agency but that is specifically exempt from the requirement of obtaining a license under this subchapter. Those agencies specifically exempt from the license requirement are:

(A) A facility or program owned or operated by an agency of the United States Government;

(B)(i) Any agency of the State of Arkansas that is statutorily authorized to administer or supervise child welfare activities.

(ii) In order to maintain exempt status, the state child welfare agency shall state every two (2) years in written form signed by the persons in charge that their agency is in substantial compliance with published state agency child welfare standards.

(iii) Visits to review and advise exempt state agencies shall be made as deemed necessary by the Child Welfare Agency Review Board to verify and maintain substantial compliance with the standards;

(C) A facility or program owned or operated by or under contract with the Department of Correction;

(D) A hospital providing acute care licensed pursuant to § 20-9-201 et seq.;

(E) Any facility governed by the Department of Human Services State Institutional System Board or its successor;

(F) Human development centers regulated by the Board of Developmental Disabilities Services pursuant to § 20-48-201 et seq.;

(G) Any facility licensed as a family home pursuant to § 20-48-601 et seq.;

(H) Any boarding school as defined in this section;

(I) Any temporary camp as defined in this section;

(J) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents. Those facilities shall be subject to program requirements modeled on nationally recognized correctional facility standards that shall be developed, administered, and monitored by the Division of Youth Services of the Department of Human Services;

(K) Any child welfare agency operated solely by a religious organization that elects to be exempt from licensing and that complies within the conditions of the exemption for church-operated agencies as set forth in this subchapter;

(L) The Division of Developmental Disabilities Services of the Department of Human Services; and

(M) Any developmental disabilities services waiver provider licensed under § 20-48-208 or § 20-48-601 et seq.;

(13)(A) "Foster home" means a private residence of one (1) or more family members that receives from a child placement agency any child who is unattended by a parent or guardian in order to provide care, training, education, or supervision on a twenty-four-hour basis, not to include adoptive homes.

(B) "Foster home" does not include a home suspended or closed by a child placement agency;

(14) "Independent living home" means any child welfare agency that provides specialized services in adult living preparation in an experiential setting for persons sixteen (16) years of age or older;

(15) "Minimum standards" means those rules and regulations as established by the Child Welfare Agency Review Board that set forth the minimum acceptable level of practice for the care of children by a child welfare agency;

(16) "Provisional foster home" means a foster home opened for no more than six (6) months by the Division of Children and Family Services of the Department of Human Services for a relative or fictive kin of a child in the custody of the Division of Children and Family Services of the Department of Human Services after it:

(A) Conducts a health and safety check, including a central registry check and a criminal background check or a check with local law enforcement, of the relative's home; and

(B) Performs a visual inspection of the home of the relative to verify that the relative and the home will meet the standards for opening a regular foster home;

(17) "Psychiatric residential treatment facility" means a residential child care facility in a nonhospital setting that provides a structured,

systematic, therapeutic program of treatment under the supervision of a psychiatrist, for children who are emotionally disturbed and in need of daily nursing services, psychiatrist's supervision, and residential care but who are not in an acute phase of illness requiring the services of an inpatient psychiatric hospital;

(18) "Relative" means a person within the fifth degree of kinship by virtue of blood or adoption;

(19) "Religious organization" means a church, synagogue, or mosque or association of same whose purpose is to support and serve the propagation of truly held religious beliefs;

(20) "Residential child care facility" means any child welfare agency that provides care, training, education, custody, or supervision on a twenty-four-hour basis for six (6) or more unrelated children, excluding foster homes that have six (6) or more children who are all related to each other but who are not related to the foster parents;

(21) "Special consideration" means approval from the Child Welfare Agency Review Board to allow a licensee to deviate from the letter of a rule if the licensee has demonstrated that the deviation is in the best interest of the children and does not pose a risk to persons served by the licensee;

(22)(A) "Substantial compliance" means compliance with all essential standards necessary to protect the health, safety, and welfare of the children in the care of the child welfare agency.

(B) Essential standards include, but are not limited to, those relating to issues involving fire, health, safety, nutrition, discipline, staff-to-child ratio, and space;

(23) "Temporary camp" means any facility or program providing twenty-four-hour care or supervision to children that meets the following criteria:

(A) The facility or program is operated for recreational, educational, or religious purposes only;

(B) No child attends the program more than forty (40) days in a calendar year; and

(C) The parents of children placed in the program retain custody and planning and financial responsibility for the children during placement; and

(24) "Unrelated minor" means a child who is not related by blood, marriage, or adoption to the owner or operator of the child welfare agency and who is not a ward of the owner or operator of the child welfare agency pursuant to a guardianship order issued by a court of competent jurisdiction.

History. Acts 1997, No. 1041, § 2; 2005, No. 1766, § 1; 2005, No. 2234, § 1; 2007, No. 634, § 1; 2009, No. 723, § 1; 2011, No. 522, §§ 1–5; 2013, No. 478, § 4; 2013, No. 1275, § 1.

Amendments. The 2011 amendment deleted "Division of Children and Family Services of the" preceding "Department" in the introductory language of (2); deleted (10) and renumbered the remaining subdivisions accordingly; inserted "juvenile member of a family in need of services, or dependent or dependent-neglected juvenile under § 9-27-303" in (12)

and twice in (19); in the introductory language of (15), substituted "by the Division of Children and Family Services of the Department of Human Services" for "by the division" and substituted "custody of the division" for "custody of the Division of Children and Family Services"; and inserted "and the home" in (15)(B).

The 2013 amendment by No. 478 substituted "relative or fictive kin" for "relative" throughout (15); and inserted "will" preceding "meet" in (15)(B).

The 2013 amendment by No. 1275 rewrote the section.

9-28-403. Child Welfare Agency Review Board — Creation — Authority.

(a)(1) There is created the Child Welfare Agency Review Board to serve as the administrative body to carry out the provisions of this subchapter.

(2) The board shall have the authority to promulgate rules and regulations to enforce the provisions of this subchapter.

(b) The board may also identify and implement alternative methods of regulation and enforcement that may include, but not be limited to:

(1) Expanding the types and categories of licenses issued for programs falling within the definition of "child welfare agency", as may be required by changes in the types of child welfare programs that may occur, and to promulgate separate regulations for each category of license as it may deem proper;

(2) Using the standards of other licensing authorities or compliance-reviewing professionals as being equivalent to partial compliance with board-promulgated rules, when those standards have been shown to predict compliance with the board-promulgated rules; and

(3) Using an abbreviated inspection that employs key standards that have been shown to predict full compliance with the rules.

(c)(1) The Department of Human Services is designated as the governmental agency charged with the enforcement of this subchapter.

(2) Only the department, licensees, agencies specifically exempted by this subchapter, and applicants for a license shall have standing to initiate formal proceedings before the board, except when otherwise provided by law.

(d) When any person, corporation, partnership, voluntary association, or other entity shall be found to operate or assist in the operation of a child welfare agency that has been licensed by the board or has had the license denied, revoked, or suspended by the board, and therefore has been ordered to cease and desist operation in accordance with the provisions of this subchapter, the board shall have the right to go into the circuit court in the jurisdiction in which the child welfare agency is being operated and upon affidavit secure a writ of injunction, without bond, restraining and prohibiting the person, corporation, partnership, voluntary association, or other entity from operating the child welfare agency.

(e) The Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall apply to all proceedings brought under this subchapter, except that the following provisions shall control during adverse action hear-

ings to the extent that they conflict with the Arkansas Administrative Procedure Act § 25-15-201 et seq.:

(1) All parties to an adverse action shall be entitled to engage in and use formal discovery as provided for in Rules 26, 28 — 34, and 36 of the Arkansas Rules of Civil Procedure including:

(A) Requests for admission;

(B) Requests for production of documents and things;

(C) Written interrogatories; and

(D) Oral and written depositions; and

(2) All evidentiary rulings in an adverse action hearing shall be governed by the Arkansas Rules of Evidence with respect to the following types of evidence:

(A) The requirement of personal knowledge of a witness as required by Rule 602;

(B) The admissibility of character evidence as set forth by Rules 608 and 609;

(C) The admissibility of opinion evidence as set forth by Rules 701 — 703; and

(D) The admissibility of hearsay evidence as set forth by Rules 801 — 806.

(f)(1) Requests for subpoenas shall be granted by the Chief Counsel of the Department of Human Services or a designee if the testimony or documents desired are considered necessary and material without being unduly repetitious of other available evidence.

(2) Subpoenas provided for in this section shall be served in the manner as now provided by law, returned, and a copy made and kept by the department.

(3) The fees and mileage for officers serving the subpoenas and witnesses answering the subpoenas shall be the same as now provided by law.

(4) Witnesses duly served with subpoenas issued under this section who shall refuse to testify or give evidence may be cited on an affidavit through application of the chief counsel of the department to the Pulaski County Circuit Court or any circuit court of the state where the subpoenas were served.

(5) Failure to obey the subpoena may be deemed a contempt, punishable accordingly.

History. Acts 1997, No. 1041, § 3; 2009, No. 723, §§ 2, 3; 2011, No. 522, § 6.

9-28-404. Child Welfare Agency Review Board — Composition.

(a) The Child Welfare Agency Review Board shall consist of Arkansas residents who shall be qualified as follows:

(1) The director of the division within the Department of Human Services designated by the Director of the Department of Human Services to administer this subchapter or his or her designee;

(2) One (1) representative from a privately owned, licensed child placement agency with expertise in foster care;

(3) One (1) representative from a privately owned, licensed child placement agency with expertise in adoptions;

(4) Two (2) representatives from licensed residential child care facilities;

(5) One (1) representative from a licensed psychiatric residential treatment facility;

(6) One (1) representative from a licensed emergency shelter; and

(7) One (1) representative from the public at large.

(b) Members shall be appointed by the Governor for four-year terms expiring on March 1 of the appropriate year, except that in making initial appointments, one (1) of the members representing licensed child placement agencies and the member representing the public at large shall serve for two (2) years and two (2) of the members representing residential facilities shall serve for three (3) years.

(c) Members of the board shall serve without compensation, but each member of the board shall be entitled to reimbursement for expenses for necessary meals, lodging, and mileage in attending board meetings, to be payable from funds appropriated for the maintenance and operation of the department.

(d) The members of the board shall select a chair from among its voting membership.

History. Acts 1997, No. 1041, § 4; 2001, No. 1414, §§ 1, 2; 2003, No. 1157, § 2; 2011, No. 522, §§ 7, 8.

Amendments. The 2011 amendment inserted "within the Department of Human Services designated by the Director of the Department of Human Services to administer this subchapter" in (a)(1); and substituted "department" for "division" in (c).

9-28-405. Child Welfare Agency Review Board — Duties.

(a)(1) The Child Welfare Agency Review Board shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, conversion, and suspension of licenses for a child welfare agency and the operation of a child welfare agency.

(2) The board may consult with such other agencies, organizations, or individuals as it shall deem proper.

(3)(A) The board shall take any action necessary to prohibit any person, partnership, group, corporation, organization, or association not licensed or exempted from licensure pursuant to this chapter from advertising, placing, planning for, or assisting in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(B) The prohibition against advertising shall not apply to persons who are seeking to add to their own family by adoption.

(b) The board may amend the rules and regulations promulgated pursuant to this section from time to time, in accordance with the rule promulgation procedures in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c)(1) The board shall have exclusive authority to promulgate rules that:

(A) Promote the health, safety, and welfare of children in the care of a child welfare agency;

(B) Promote safe and healthy physical facilities;

(C) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(D) Ensure appropriate educational programs and activities for children in the care of a child welfare agency;

(E) Ensure adequate and healthy food service;

(F) Include procedures for the receipt, recordation, and disposition of complaints regarding allegations of violations of this subchapter, of the rules promulgated under this subchapter, or of child maltreatment laws;

(G) Include procedures for the assessment of child and family needs and for the delivery of services designed to enable each child to grow and develop in a permanent family setting;

(H) Ensure that criminal record checks and central registry checks are completed on owners, operators, and employees of a child welfare agency as set forth in this subchapter;

(I) Require the compilation of reports and making those reports available to the Division of Youth Services of the Department of Human Services when the board determines it is necessary for compliance determination or data compilation;

(J) Ensure that a child placement agency:

(i) Treats clients seeking or receiving services in a professional manner, as defined by rules promulgated pursuant to this section; and

(ii) Provides clients seeking or receiving services from a child placement agency that provides adoption services with the phone number and address of the Child Welfare Agency Licensing Unit of the Department of Human Services where complaints can be lodged;

(K) Require that all child welfare agencies that provide adoption services fully apprise in writing all clients involved in the process of adopting a child of the agency's adoption program or services, including all possible costs associated with the adoption program; and

(L) Establish rules governing retention of licensing records maintained by the department.

(2) This subchapter shall not be construed to prevent a licensed child welfare agency from adopting and applying internal operating procedures that meet or exceed the minimum standards required by the board.

(d)(1) Provided that the health, safety, and welfare of children in the care of a child welfare agency are not endangered, nothing in this subchapter shall permit the board to promulgate or enforce any rule that has the effect of:

(A) Interfering with the religious teaching or instruction offered by a child welfare agency;

(B) Infringing upon the religious beliefs of the holder or holders of a child welfare agency license;

(C) Infringing upon the right of an agency operated by a religious organization to consider creed in any decision or action relating to admitting or declining to admit a child or family for services;

(D) Infringing upon the parent's right to consent to a child's participating in prayer or other religious practices while in the care of the child welfare agency; or

(E) Prohibiting the use of corporal discipline.

(2)(A)(i) A child welfare agency that articulates a sincerely held religious belief that is violated by a specific rule promulgated by the board shall notify the department in writing of the belief and the specific rule that violates the belief.

(ii) The rule shall be presumptively invalid as applied to that child welfare agency.

(B)(i) The department may then file a petition before the board seeking to enforce the rule.

(ii) The department shall bear the burden of showing that the health, safety, or welfare of children would be endangered by the exemption, and if the board so finds by a preponderance of the evidence, the board shall render a finding of fact so concluding.

(e) The board shall issue all licenses to child welfare agencies upon majority vote of board members present during each properly called board meeting at which a quorum is present when the meeting is called to order.

(f)(1)(A) The board shall have the power to deny an application to operate a child welfare agency or revoke or suspend a previously issued license to operate a child welfare agency.

(B) The board may deny, suspend, convert, or revoke a child welfare agency license or issue letters of reprimand or caution to a child welfare agency if the board finds by a preponderance of the evidence that the applicant or licensee:

(i) Fails to comply with the provisions of this subchapter or any published rule of the board relating to child welfare agencies;

(ii) Furnishes or makes any statement or report to the department that is false or misleading;

(iii) Refuses or fails to submit required reports or to make available to the department any records required by it in making an investigation of the agency for licensing purposes;

(iv) Refuses or fails to submit to an investigation or to reasonable inspection by the department;

(v) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;

(vi) Fails to engage in a course of professional conduct in dealing with clients being served by the child placement agency, as defined by rules promulgated pursuant to this section;

(vii) Demonstrates gross negligence in carrying out the duties at the child placement agency; or

(viii) Fails to provide clients involved in the process of adoption of a child with correct and sufficient information pertaining to the adoption process, services, and costs.

(2) Any denial of application or revocation or suspension of a license shall be effective when made.

(g) The board shall review the qualifications of persons required to have background checks under this subchapter.

(h)(1) The board or its designee may grant an agency's request for alternative compliance upon a finding that the child welfare agency does not meet the letter of a regulation promulgated under this subchapter but that the child welfare agency meets or exceeds the intent of that rule through alternative means.

(2)(A) If the board or its designee grants a request for alternative compliance, the child welfare agency's practice as described in the request for alternative compliance shall be the compliance terms under which the child welfare agency will be held responsible.

(B) The board or its designee may grant an agency's request for special consideration upon a finding that the request is in the best interest of the child or children or does not pose a risk to the persons served by the agency.

(C) Violations of those terms shall constitute a rule violation.

(i)(1)(A) The board shall have the authority to impose a civil penalty upon any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter, except that the imposition of civil penalties shall not apply to agencies that have been granted a church-operated exemption pursuant to this subchapter.

(B)(i) The board may impose a civil penalty upon any person, partnership, group, corporation, organization, or association not licensed or exempt from licensure as a child welfare agency in the State of Arkansas pursuant to this subchapter that advertises, places, plans for, or assists in the placement of any unrelated minor for purposes of adoption or for care in a foster home.

(ii) The prohibition against advertising does not apply to persons who are seeking to add to their own family by adoption.

(2) The board shall have the discretion to impose a civil penalty pursuant to this section when the board determines by clear and convincing evidence that the person sought to be charged has violated this subchapter or the rules promulgated thereunder willfully, wantonly, or with conscious disregard for law or regulation.

(3) The board may impose civil penalties as follows:

(A)(i) Class A violations as defined in this subchapter shall be subject to a civil penalty of five hundred dollars ($500) for each violation, with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than two thousand five hundred dollars ($2,500) for Class A violations occurring in any one (1) calendar month; and

(B)(i) Class B violations as defined in this subchapter shall be subject to a civil penalty of one hundred dollars ($100) for each violation with each day of noncompliance constituting a separate violation.

(ii) In no event shall the board impose civil penalties of more than five hundred dollars ($500) for Class B violations occurring in any one (1) calendar month.

(4) If any person upon whom the board has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the board's decision to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action by the Attorney General.

(j)(1)(A) The board shall notify the applicant or licensee of the department's petition for adverse action in writing and set forth the facts forming the basis for the request for the adverse action.

(B) This notice shall offer the licensee the opportunity for a predeprivation adverse action hearing to determine if the adverse action should be taken against the licensee or applicant.

(2) This section does not prevent the department or the board from closing a child welfare agency on an emergency basis if emergency closure is immediately required to protect the health, safety, or welfare of children, in which case the licensee shall be entitled to a postdeprivation adverse action hearing.

(k)(1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) Within ten (10) business days after rendering a decision, the board shall forward to the applicant or licensee written findings of fact and conclusions of law articulating the board's decision.

(B) The board shall also issue an order that the applicant or licensee cease and desist from the unlawful operation of a child welfare agency if the adverse action taken was revocation or suspension of the license or denial of an application.

(l)(1) If, upon the filing of a petition for a judicial review, the reviewing court determines that there is a substantial possibility that the board's decision against the licensee or applicant may be reversed, the circuit court may enter a stay prohibiting enforcement of a decision of the board, provided that the court articulates the facts from the adverse action hearing record that constitute a substantial possibility of reversal.

(2)(A) Thereafter, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay.

(B) If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(m) All rules promulgated under this section and all public comment received in writing by the department in response shall be made available for review by the Senate Interim Committee on Children and

Youth and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs, and by the Governor or his or her designee from among the Governor's staff.

(n)(1)(A) The validity or application of any rule or regulation promulgated by the board under authority of this subchapter shall be subject to remedies provided by law for obtaining declaratory judgments at the suit of any interested person instituted in the circuit court of any county in which the plaintiff resides or does business or in Pulaski County Circuit Court.

(B) However, the board must be named a party defendant and the board must be summoned as in an action by ordinary proceedings.

(2) If a juvenile is found to be maltreated due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, custody, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(3)(A) If the person or facility other than the parent or guardian of the juvenile found to be maltreated was not subject to this subchapter, the court may order the person or facility to obtain a license from the board as a condition precedent to the person or facility providing care, training, education, custody, or supervision of any juveniles of whom the person or facility is not the parent or guardian.

(B) If the court so orders, this subchapter shall thereafter apply to the person or facility subject to the court order.

(o)(1) The Department of Human Services shall maintain a website accessible to the general public that contains information on child placement agencies.

(2) The website shall contain:

(A) The name, phone number, and address of all child placement agencies licensed by the board;

(B) Information on each child placement agency, specifically if the license is in good standing, if the license has ever been revoked or suspended, or if any letters of caution or reprimand have been issued by the board; and

(C) The name and contact information for a person in the unit who handles complaints about child placement agencies.

History. Acts 1997, No. 1041, § 5; 2005, No. 2225, § 1; 2005, No. 2234, § 2; 2009, No. 723, §§ 4–6; 2011, No. 522, §§ 9–14; 2013, No. 1275, § 2.

Amendments. The 2011 amendment deleted "Division of Children and Family Services of the" preceding "Department" in (c)(1)(J)(ii); substituted "department" for "division" in (c)(1)(L), throughout (d)(2), and in (f)(1)(B)(ii)-(iv), (j)(2), and (m); substituted "department's" for "division's" in (j)(1)(A); and deleted "and regulations" following "rules" in (m).

The 2013 amendment inserted "or its designee" in (h)(1) and (h)(2)(A); and inserted (h)(2)(B) and redesignated former (h)(2)(B) as (h)(2)(C).

9-28-406. Department enforcement duties.

(a)(1) The Department of Human Services shall advise the Child Welfare Agency Review Board regarding proposed rules and regulations.

(2) The department shall obtain comments from the board prior to initiating the rule promulgation process.

(b)(1) The board is authorized to make an inspection and investigation of any proposed or operating child welfare agency and of any personnel connected with that agency to the extent that an inspection and investigation are necessary to determine whether the child welfare agency will be or is being operated in accordance with this subchapter and the rules and regulations promulgated by the board.

(2) The board may delegate this authority to any agencies of the State of Arkansas whom the board deems proper.

(c)(1) The department or any other public agency having authority or responsibility with respect to child maltreatment shall have the authority to investigate any alleged or suspected child maltreatment in any child welfare agency, whether licensed or exempt.

(2) Nothing contained in this section shall be construed to limit or restrict that authority.

(d)(1) The department shall assist licensees and applicants in complying with published rules and regulations by issuing advisory opinions regarding matters of rule compliance when so requested.

(2) The procedure for issuing advisory opinions shall be as follows:

(A)(i) Any licensee or applicant for a license may submit a written request for an advisory opinion on whether or not a practice in any planned or existing child welfare agency complies with the rules promulgated pursuant to this subchapter.

(ii) The department must respond to the request in writing within twenty (20) business days of receiving the request.

(iii) If the department's response is that the subject of the request would not comply with published standards, the department shall suggest an alternative practice that in its opinion would comply with published standards when it is possible to do so; and

(B)(i) A written opinion required in subdivision (d)(2)(A) of this section is binding on the department as a declaratory order if the applicant or licensee has acted in reliance on the opinion.

(ii) Notwithstanding the foregoing, in no event shall the advisory opinion be binding on the board if the compliance issue that is the subject of the advisory opinion is presented to the board for review.

(e)(1) The department shall inspect child welfare agencies as provided in this subsection.

(2) If the department finds that a child welfare agency has failed to comply with an applicable law or rule, the department shall issue a notice of noncompliance to the child welfare agency. The department's notice of noncompliance shall contain:

(A) A factual description of the conditions that constitute a violation of the law or rule;

(B) The specific law or rule violated; and

(C) A reasonable time frame within which the violation must be corrected.

(3)(A)(i) If the child welfare agency believes that the contents of the department's notice of noncompliance are in error, the child welfare agency may ask licensing authorities to reconsider the parts of the notice of noncompliance that are alleged to be in error.

(ii) The request for reconsideration must be in writing, delivered by certified mail within twenty (20) business days of receipt of the notice of noncompliance.

(iii) The request shall specify the parts of the notice of noncompliance that are alleged to be in error, explaining why they are in error, and include documentation to support the allegation of error.

(B)(i) The department shall render a decision on the request for reconsideration within twenty (20) working days after the date the request for reconsideration was received.

(ii) The licensee's request for reconsideration and supporting documentation shall be retained by the department and made a part of the licensee's record.

(4)(A) If upon reinspection or other acceptable means of verification, the department finds that the licensee has corrected the violation or violations specified in the notice of noncompliance, the department shall note the correction and the date the correction was verified in the licensee's record.

(B) If upon reinspection, the department finds that the licensee has not corrected the violations specified in the notice of noncompliance within the required time frame, the department may in its discretion petition the board to impose appropriate adverse action against the licensee.

(C) In the case of an applicant for a license, if the board or its designee finds that the applicant has not corrected the violations in a previously issued notice of noncompliance, the department may recommend denial of the application for a child welfare agency license.

History. Acts 1997, No. 1041, § 6; 2011, No. 522, § 15; 2013, No. 1275, § 3.

Amendments. The 2011 amendment substituted "department" for "division," and "department's" for "division's" throughout the section; substituted "Department of Human Services" for "division" in (a)(1); substituted "a report" for "corrective action notices" in (e)(1); and inserted "with the report" in (e)(2).

The 2013 amendment rewrote (e).

9-28-407. Licenses required and issued.

(a)(1) It shall be unlawful for any person, partnership, group, corporation, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest to operate or assist in the operation of a child welfare agency that has not been licensed by the Child Welfare Agency Review Board from licensing pursuant to this subchapter.

(2) This license shall be required in addition to any other license required by law for all entities that fit the definition of a child welfare agency and are not specifically exempted, except that no nonpsychiatric residential treatment facility or agency licensed or exempted pursuant to this subchapter shall be deemed to fall within the meaning of § 20-10-101 for any purpose.

(3) Any child welfare agency capacity licensed or permitted by the board as of March 1, 2003, whether held by the original licensee or by a successor in interest to the original licensee, is exempted from:

(A) Obtaining any license or permit from the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services;

(B) Obtaining any permit from the Health Services Permit Agency or the Health Services Permit Commission to operate at the capacity licensed by the board as of March 1, 2003; and

(C) Obtaining any permit from the agency or the commission to operate at any future expanded capacity serving only non-Arkansas residents unless a permit is required by federal law or regulation.

(4) Any further expansion of capacity by a licensee of the board shall require a license or permit from the Office of Long-Term Care and the agency unless the bed expansion is exempted under subdivisions (a)(3)(A) — (C) of this section.

(5)(A) Subdivisions (a)(3) and (4) of this section shall be construed to include a child welfare agency that is licensed or permitted by the board as a residential facility as of March 1, 2003, if the licensee then met and continues to meet the following criteria:

(i) The licensee is a nonhospital-based residential facility that specializes in providing treatment and care for seriously emotionally disturbed children under eighteen (18) years of age who have co-occurring substance abuse and psychiatric disorders;

(ii) The licensee possesses accreditation from at least one (1) of the following national accreditation entities:

(a) The Commission on Accreditation of Rehabilitation Facilities;

(b) The Council on Accreditation of Services for Families and Children; or

(c) The Joint Commission on Accreditation of Healthcare Organizations;

(iii) The licensee is licensed by the Division of Behavioral Health Services or its successor; and

(iv) The licensee is operating a nontraditional program that is approved by the Department of Education.

(B)(i) Licensees described in subdivision (a)(5)(A) of this section shall be eligible for reimbursement by the Arkansas Medicaid Program under the same methodology and at the same reimbursement rates as residential treatment facilities that do not specialize in treating children with co-occurring substance abuse and psychiatric disorders.

(ii) However, Medicaid payments shall be reduced by payments received from other payors in connection with Medicaid-covered care and treatment furnished to Medicaid recipients.

(b)(1) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of this subchapter, to knowingly violate the orders issued by the board, or to advertise the provision of child care or child placement when not licensed under this subchapter to provide those services, unless determined by the board to be exempt from licensure under this subchapter.

(2) Any violation of this section shall constitute a Class D felony.

(c)(1) Any person, partnership, group, corporation, organization, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, desiring to operate a child welfare agency shall first make application for a license or a church-operated exemption for the facility to the board on the application forms furnished for this purpose by the board.

(2)(A) The Department of Human Services shall also furnish to the applicant upon request an application form.

(B) The child welfare agency shall submit a separate application for license for each separate physical location of a child welfare agency.

(d)(1) The Department of Human Services shall review, inspect, and investigate each applicant to operate a child welfare agency and shall present a recommendation to the board whether the board should issue a license and what the terms and conditions of the license should be.

(2) The Department of Human Services shall complete its recommendation within ninety (90) days after receiving a complete application from the applicant. A complete application shall consist of:

(A) A completed application form prepared and furnished by the board;

(B) A copy of the articles of incorporation, bylaws, and current board roster, if applicable, including names and addresses of the officers;

(C) A complete personnel list with verifications of qualifications and experience;

(D) Substantiation of the financial soundness of the agency's operation; and

(E) A written description of the agency's program of care, including intake policies, types of services offered, and a written plan for providing health care services to children in care.

(e)(1) The board shall issue a regular license that shall be effective until adverse action is taken on the license if the board finds that:

(A) The applicant for a child welfare agency license meets all licensing requirements; or

(B) The applicant for a child welfare agency license meets all essential standards, has a favorable compliance history, and has the ability and willingness to comply with all standards within a reasonable time.

(2)(A) The board may issue a provisional license that shall be effective for up to one (1) year if the board finds that the applicant meets all essential standards but the applicant requires more frequent monitoring because the applicant's ability or willingness to meet all standards within a reasonable time has not been favorably determined.

(B) The board shall at no time issue a regular or provisional license to any agency or facility that does not meet all essential standards.

(f)(1) A license to operate a child welfare agency shall apply only to the owner stated on the application.

(2) The license shall be transferable, along with all capacity and rights of licensure, from:

(A) One (1) location to another; and

(B) One (1) owner to another, if permitted under subdivision (f)(3) of this section.

(3) Whenever ownership of a controlling interest in the operation of a child welfare agency is sold, the following procedures shall be followed:

(A) The seller shall notify the Department of Human Services of the sale at least thirty (30) days before the completed sale;

(B) The seller shall remain responsible for the operation of the child welfare agency until the agency is closed or an amended license is issued to the buyer;

(C) The seller shall remain liable for all penalties assessed against the child welfare agency that are imposed for violations occurring before the transfer of a license to the buyer;

(D) The buyer shall provide all documentation required of a new applicant to the Department of Human Services;

(E) The buyer shall be subject to any corrective action notices to which the seller was subject; and

(F) The provisions of subsection (a) of this section, including those provisions regarding obtaining licenses or permits from the Office of Long-Term Care and regarding obtaining any permits from the Health Services Permit Agency or the Health Services Permit Commission, shall apply in their entirety to the new owner of the child welfare agency.

(g) If the board votes to issue a license to operate a child welfare agency, the license must be posted in a conspicuous place in the child welfare agency and must state at a minimum:

(1) The full legal name of the entity holding the license, including the business name, if different;

(2) The address of the child welfare agency;

(3) The effective date and expiration date of the license, if applicable;

(4) The type of child welfare agency the licensee is authorized to operate;

(5) The maximum number and ages of children that may receive services from the agency, if applicable;

(6) The status of the license, whether regular, provisional, or probationary; and

(7) Any special conditions or limitations of the license.

(h)(1) Reports, correspondence, memoranda, case histories, or other materials, including protected health information, compiled or received by a licensee or a state agency engaged in placing a child, including both foster care and protective services records, shall be confidential and shall not be released or otherwise made available except to the extent permitted by federal law and only:

(A) To the Director of the Child Welfare Agency Review Board as required by regulation;

(B) For adoptive placements as provided by the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(C) To multidisciplinary teams under § 12-18-106(a);

(D)(i) To the child's parent, guardian, or custodian.

(ii) However, the licensee or state agency may redact information from the record such as the name or address of foster parents or providers when it is in the best interest of the child.

(iii) The licensee or state agency may redact counseling records, psychological or psychiatric evaluations, examinations, or records, drug screens or drug evaluations, or similar information concerning a parent if the other parent is requesting a copy of a record;

(E) To the child;

(F)(i) To health care providers to assist in the care and treatment of the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child.

(ii) "Health care providers" includes doctors, nurses, emergency medical technicians, counselors, therapists, mental health professionals, and dentists;

(G) To school personnel and day care centers caring for the child at the discretion of the licensee or state agency and if deemed to be in the best interest of the child;

(H)(i) To foster parents, the foster care record for foster children currently placed in their home.

(ii) However, information about the parents or guardians and any siblings not in the foster home shall not be released;

(I)(i) To the board.

(ii) However, at any board meeting no information that identifies by name or address any protective services recipient or foster care child shall be orally disclosed or released in written form to the general public;

(J) To the Division of Children and Family Services of the Department of Human Services, and the Department of Education, including child welfare agency licensing specialists;

(K) For any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(L) Upon presentation of an order of appointment, to a court-appointed special advocate;

(M) To the attorney ad litem for the child;

(N) For law enforcement or the prosecuting attorney upon request;

(O) To circuit courts, as provided for in the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(P) In a criminal or civil proceeding conducted in connection with the administration of any such plan or program;

(Q) For purposes directly connected with the administration of any of the state plans as outlined at 42 U.S.C. § 671(a)(8), as in effect January 1, 2001;

(R) For the administration of any other federal or federally assisted program that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;

(S)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services;

(T) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(U) To a person, provider, or government entity identified by the licensee or the state agency as having services needed by the child or his or her family; or

(V) To volunteers authorized by the licensee or the state agency to provide support or services to the child or his or her family at the discretion of the licensee or the state agency and only to the extent information is needed to provide the support or services.

(W)(i) To a person, agency, or organization engaged in a bona fide research or evaluation project that is determined by the Division of Children and Family Services of the Department of Human Services to have value for the evaluation or development of policies and programs within the Division of Children and Family Services of the Department of Human Services.

(ii) Any confidential information provided by the Department of Human Services for a research or evaluation project under this subdivision (h)(1)(W) shall not be redisclosed or published.

(X) To a child fatality review panel as authorized by the Department of Human Services.

(2) Foster home and adoptive home records are confidential and shall not be released except:

(A) To the foster parents or adoptive parents;

(B) For purposes of review or audit, by the appropriate federal or state agency;

(C) Upon allegations of child maltreatment in the foster home or adoptive home, to the investigating agency;

(D) To the board;

(E) To the Division of Children and Family Services of the Department of Human Services and the Department of Education, including child welfare agency licensing specialists;

(F) To law enforcement or the prosecuting attorney upon request;

(G) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(H)(i) To individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(ii) No disclosure shall be made to any committee or legislative body of any information that identifies by name or address any recipient of services; or

(I) To the attorney ad litem and court-appointed special advocate, the home study on the adoptive family selected by the Department of Human Services to adopt the juvenile.

(3)(A) Any person or agency to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this subsection.

(B) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

(C) Nothing in this subchapter shall be construed to prevent subsequent disclosure by the child or his or her parent or guardian.

(D) Any data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the Department of Human Services are confidential and shall be sealed and not redisclosed without a protective order to ensure that items of evidence for which there is a reasonable expectation of privacy are not distributed to persons or institutions without a legitimate interest in the evidence.

(i) Foster parents approved by a child placement agency licensed by the Department of Human Services shall not be liable for damages caused by their foster children, nor shall they be liable to the foster children nor to the parents or guardians of the foster children for injuries to the foster children caused by acts or omissions of the foster parents unless the acts or omissions constitute malicious, willful, wanton, or grossly negligent conduct.

(j) [Repealed.]

History. Acts 1997, No. 1041, § 7; 1999, No. 1319, § 1; 2001, No. 1211, § 1; 2001, No. 1800, § 1; 2003, No. 1157, § 1; 2003, No. 1166, § 39; 2003, No. 1285, § 1; 2005, No. 888, § 2; 2005, No. 1766, § 2; 2005, No. 2234, §§ 3, 4; 2007, No. 634, § 2; 2009, No. 723, § 7; 2009, No. 758, § 16; 2011, No. 522, §§ 16–20; 2011, No. 591, § 10; 2013, No. 1107, § 10; 2013, No. 1275, §§ 4–7.

Amendments. The 2011 amendment by No. 522 substituted "Department of Human Services" for "division" in (c)(2)(A), (d)(1), (d)(2), and (f)(2)(A); substituted "upon request" for "with" in (c)(2)(A); substituted "along with all capacity and rights of licensure, if permitted under subdivision (f)(2) of this section" for "or from one (1) place to another" in (f)(1); inserted "amended" preceding "license" in (f)(2)(B); deleted "or deficiencies" following "violations" in (f)(2)(C); substituted "Office of Long-Term Care" for "office" in (f)(2(E); added "if applicable" at the end of (g)(3); substituted "if applicable" for "if the agency is not a child placement agency" in

(g)(5); inserted "and the Department of Education" in (h)(1)(J) and (h)(2)(E); and added (h)(1)(W).

The 2011 amendment by No. 591 repealed (j).

The 2013 amendment by No. 1107 substituted "Division of Behavioral Health Services" for "Office of Alcohol and Drug Abuse Prevention" in (a)(5)(A)(iii).

The 2013 amendment by No. 1275 deleted "a copy of this subchapter and the policies and procedures of the board at the time the person requests" following "upon request" in (c)(2)(A); rewrote (f)(1); inserted present (f)(2) and (f)(3)(D) and redesignated the remaining subdivisions accordingly; and added (h)(1)(X) and (h)(3)(D).

9-28-409. Criminal record and child maltreatment checks.

(a)(1) Each of the following persons in a child welfare agency shall be checked with the Child Maltreatment Central Registry in his or her state of residence and any state of residence in which the person has lived for the past five (5) years and in the person's state of employment, if different, for reports of child maltreatment in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) A foster parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(D) An adoptive parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(E) An owner having direct and unsupervised contact with children; and

(F) A member of the agency's board of directors having direct and unsupervised contact with children.

(2) The board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3)(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the board to determine appropriate corrective action measures that would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check at a minimum of every two (2) years, including adoptive parents who reside in Arkansas pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)(1) Each of the following persons in a child welfare agency shall be checked with the Identification Bureau of the Department of Arkansas

State Police to determine if the person has pleaded guilty or nolo contendere to or has been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen (18) years of age and older, excluding children in foster care; and

(F)(i) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care, who are not residents of Arkansas shall provide state-of-residence criminal records checks, if available.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen and one-half (18 ½) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Department of Arkansas State Police to determine if any of the persons have pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the board at a minimum of every two (2) years.

(3)(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that Department of Arkansas State Police criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(4) All persons required to be checked with the Department of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) years, except that adoptive parents who reside in Arkansas shall repeat the check every year pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(c)(1) Each of the following persons in a child welfare agency who has not lived in Arkansas continuously for the past five (5) years shall have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation to determine if the person has pleaded guilty or nolo

contendere to or been found guilty of the offenses listed in this subchapter:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen (18) years of age and older, excluding children in foster care; and

(F)(i) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen (18) years of age and older, excluding children in foster care, shall not be required to have a criminal background check performed by the Federal Bureau of Investigation if:

(a) The adoptive parents and each member of the household age eighteen (18) years of age and older, excluding children in foster care, have continuously resided in a state for at least five (5) years before the adoption; and

(b) The state-of-residence criminal records check is available.

(2)(A)(i) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen (18) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation to determine if any of the persons has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter.

(ii) A household member who turns eighteen (18) years of age has up to six (6) months from the date of his or her eighteenth birthday to have a background check completed.

(B) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the board, evidence that the Federal Bureau of Investigation's criminal records checks have been initiated on all persons required to be checked and the results of the checks.

(C) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(d)(1) Each person required to have a criminal records check under this subchapter shall complete a criminal records check form developed by the Department of Human Services and shall sign the form that contains the following under oath before a notary public:

(A) Certification that the subject of the check consents to the completion of the check;

(B) Certification that the subject of the check has not pleaded guilty or nolo contendere to or been found guilty of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made by the board with respect to his or her employment status or licensing status;

(D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare agency due to information obtained by the check that indicates that the subject of the check has pleaded guilty or nolo contendere to or been found guilty of or is under pending indictment for a crime listed in this subchapter; and

(E) Notification that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. No. 92-544.

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Identification Bureau of the Department of Arkansas State Police for processing within ten (10) days of hiring the employee or volunteer, who shall remain under conditional employment or volunteerism until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the board from denying a license or exemption to an owner or preventing an operator or employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

(4) In the event a legible set of fingerprints as determined by the Department of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of two (2) attempts by qualified law enforcement personnel, the board shall determine eligibility based upon a name check by the Department of Arkansas State Police and the Federal Bureau of Investigation.

(5)(A) An owner or operator of a child welfare agency shall not be liable during a conditional period of service for hiring any person required to have a background check pursuant to this subchapter who may be subject to a charge of false swearing upon completion of central registry and criminal records check.

(B)(i) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or reasonably should have known was material.

(ii) Lack of knowledge that information is material is not a defense to a charge of false swearing.

(C) For purposes of this subchapter, false swearing is a Class A misdemeanor.

(e)(1) A report of a pleading of guilty or nolo contendere or a finding of guilt to any charge listed in this subsection shall be:

(A) Returned to the Division of Children and Family Services of the Department of Human Services for review; and

(B) Considered regardless of whether or not the record is expunged, pardoned, or otherwise sealed.

(2) A person who is required to have a criminal records check under subdivisions (b)(1) or (c)(1) of this section shall be absolutely and permanently prohibited from having direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

(A) Abuse of an endangered or impaired person, if felony, § 5-28-103;

(B) Arson, § 5-38-301;

(C) Capital Murder, § 5-10-101;

(D) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;

(E) Kidnapping, § 5-11-102;

(F) Murder in the first degree, § 5-10-102;

(G) Murder in the second degree, § 5-10-103;

(H) Rape, § 5-14-103;

(I) Sexual assault in the first degree, § 5-14-124; and

(J) Sexual assault in the second degree, § 5-14-125;

(3) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or (c)(1) of this section shall not be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by a court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

(A) Criminal attempt, § 5-3-201, to commit any offenses in subdivision (e)(2) or (3) of this section;

(B) Criminal complicity, § 5-3-202, to commit any offenses in subdivision (e)(2) or (3) of this section;

(C) Criminal conspiracy, § 5-3-401, to commit any offenses in subdivision (e)(2) or (3) of this section;

(D) Criminal solicitation, § 5-3-301, to commit any offenses in subdivision (e)(2) or (3) of this section;

(E) Assault in the first, second, or third degree, §§ 5-13-205 — 5-13-207;

(F) Aggravated assault, § 5-13-204;

(G) Aggravated assault on a family or household member, § 5-26-306;

(H) Battery in the first, second, or third degree, §§ 5-13-201 — 5-13-203;

(I) Breaking or entering, § 5-39-202;
(J) Burglary, § 5-39-201;
(K) Coercion, § 5-13-208;
(L) Computer crimes against minors, § 5-27-601 et seq.;
(M) Contributing to the delinquency of a juvenile, § 5-27-220;
(N) Contributing to the delinquency of a minor, § 5-27-209;
(O) Criminal impersonation, § 5-37-208;
(P) Criminal use of a prohibited weapon, § 5-73-104;
(Q) Communicating a death threat concerning a school employee or student, § 5-17-101;
(R) Domestic battery in the first, second, or third degree, §§ 5-26-303 — 5-26-305;
(S) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
(T) Endangering the welfare of a minor in the first or second degree, §§ 5-27-205 and 5-27-206;
(U) Endangering the welfare of an incompetent person in the second degree, § 5-27-202;
(V) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;
(W) False imprisonment in the first or second degree, §§ 5-11-103 and 5-11-104;
(X) Felony abuse of an endangered or impaired person, § 5-28-103;
(Y) Felony interference with a law enforcement officer, § 5-54-104;
(Z) Felony violation of the Uniform Controlled Substance Act, §§ 5-64-101 et seq. — 5-64-501 et seq.;
(A)(A) Financial identity fraud, § 5-37-227;
(B)(B) Forgery, § 5-37-201;
(C)(C) Incest, § 5-26-202;
(D)(D) Interference with court ordered custody, § 5-26-502;
(E)(E) Interference with visitation, § 5-26-501;
(F)(F) Introduction of controlled substance into the body of another person, § 5-13-210;
(G)(G) Manslaughter, § 5-10-104;
(H)(H) Negligent homicide, § 5-10-105;
(I)(I) Obscene performance at a live public show, § 5-68-305;
(J)(J) Offense of cruelty to animals, § 5-62-103;
(K)(K) Offense of aggravated cruelty to dog, cat, or horse, § 5-62-104;
(L)(L) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
(M)(M) Sexual solicitation, § 5-70-103;
(N)(N) Permanent detention or restraint, § 5-11-106;
(O)(O) Permitting abuse of a minor, § 5-27-221;
(P)(P) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
(Q)(Q) Promoting obscene materials, § 5-68-303;
(R)(R) Promoting obscene performance, § 5-68-304;

(S)(S) Promoting prostitution in the first, second, or third degree, §§ 5-70-104 — 5-70-106;

(T)(T) Prostitution, § 5-70-102;

(U)(U) Public display of obscenity, §5-68-205;

(V)(V) Resisting arrest, § 5-54-103;

(W)(W) Robbery, § 5-12-102;

(X)(X) Aggravated robbery, § 5-12-103;

(Y)(Y) Sexual offenses, § 5-14-101 et seq.;

(Z)(Z) Simultaneous possession of drugs and firearms, § 5-74-106;

(A)(A)(A) Soliciting money or property from incompetents, § 5-27-229;

(B)(B)(B) Stalking, § 5-71-229;

(C)(C)(C) Terroristic act, § 5-13-310;

(D)(D)(D) Terroristic threatening, § 5-13-301;

(E)(E)(E) Theft of public benefits, § 5-36-202;

(F)(F)(F) Theft by receiving, § 5-36-106;

(G)(G)(G) Theft of property, § 5-36-103;

(H)(H)(H) Theft of services, § 5-36-104;

(I)(I)(I) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(J)(J)(J) Unlawful discharge of a firearm from a vehicle, § 5-74-107; and

(K)(K)(K) Voyeurism, § 5-16-102.

(4) A former or future law of this or any other state or of the federal government that is substantially equivalent to one (1) of the offenses listed in subdivision (e)(3) of this section shall be considered as prohibiting under subdivisions (e)(2) and (3) of this section.

(f)(1) A person who is required to have a criminal records check under subdivision (b)(1) or (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be absolutely disqualified from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency during the period of the person's confinement, probation, or parole supervision unless the conviction is vacated or reversed.

(2) Except as provided under subdivision (f)(3) of this section, a person who has pleaded guilty or nolo contendere to or been found guilty of one (1) of the offenses listed in subdivision (e)(3) of this section shall not work in a child welfare agency unless:

(A) The date of a plea of guilty or nolo contendere, or the finding of guilt for a misdemeanor offense is at least five (5) years from the date of the records check; and

(B) There have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the background check request.

(3)(A) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under

subdivision (b)(1) or (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole supervision unless the conviction is vacated or reversed.

(B) An owner, operator, volunteer, foster parent, adoptive parent, household member of a foster parent or adoptive parent, member of any child welfare agency's board of directors, or an employee in a child welfare agency shall not petition the Child Welfare Agency Review Board unless the agency supports the petition, which can be rebutted in the following manner:

(i) The applicant shall petition the Child Welfare Agency Review Board to make a determination that the applicant does not pose a risk of harm to any person;

(ii) The applicant shall bear the burden of making such a showing; and

(iii)*(a)* The Child Welfare Agency Review Board may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having pleaded guilty or nolo contendere to or been found guilty of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility.

(b) In making a determination, the Child Welfare Agency Review Board shall consider:

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of the crimes;

(4) The relation between the crime and the health, safety, and welfare of any person, such as the:

(A) Age and vulnerability of the crime victim;

(B) Harm suffered by the victim; and

(C) Similarity between the victim and the persons served by a child welfare agency;

(5) The time elapsed without a repeat of the same or similar event;

(6) Documentation of successful completion of training or rehabilitation related to the incident; and

(7) Any other information that relates to the applicant's ability to care for children or is deemed relevant.

(c) The Child Welfare Agency Review Board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action of the Child Welfare Agency Review Board and is not subject to review.

History. Acts 1997, No. 1041, § 9; 1999, No. 328, § 1; 2001, No. 1211, § 2; 2003, No. 1087, § 11; 2005, No. 1766, § 3; 2005, No. 1923, § 1; 2007, No. 634, § 3; 2009, No. 723, §§ 8–10; 2011, No. 522, §§ 21, 22; 2011, No. 570, § 71; 2011, No. 591, § 11; 2013, No. 1275, § 8.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provides: "The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment by No. 522 added (b)(1)(E) and (F); and added (c)(1)(E) and (F).

The 2011 amendment by No. 570 substituted "the former § 5-64-401 and § 5-64-419 — § 5-64-442" for "§ 5-64-401" in (e)(1)(T).

The 2011 amendment by No. 591 deleted former (f) and (g) and redesignated former (h) as (f); substituted "subdivision (f)(2)" for "subdivision (h)(2)" in (f)(1); and deleted former (i).

The 2013 amendment rewrote the section.

9-28-410 — 9-28-414. [Repealed.]

Publisher's Notes. These sections, concerning foster care placements, foster children and educational issues, Department of Human Services — power to obtain information, smoking in the presence of foster children, and public disclosure of information on deaths and maltreatment, were repealed by Acts 2011, No. 591, § 12. They were derived from the following sources:

9-28-410. Acts 1999, No. 1363, § 1; 2003, No. 1054, § 1; 2005, No. 1191, § 6; 2007, No. 634, § 4.

9-28-411. Acts 2005, No. 1961, § 1.

9-28-412. Acts 2007, No. 605, § 1.

9-28-413. Acts 2007, No. 703, § 6.

9-28-414. Acts 2009, No. 674, § 1.

Subchapter 7 — Community-Based Sanctions

SECTION.

9-28-704. Contracts with community-based providers.

(a) Each new professional or consultant service contract over twenty-five thousand dollars ($25,000) of the Division of Youth Services of the Department of Human Services with a community-based provider shall be filed for review with the Legislative Council or the Joint Budget Committee if the General Assembly is in session at least thirty (30) days before the execution date of the contract.

(b) Before a professional or consultant service contract with a community-based provider is modified or amended, the division shall:

(1) Notify the community-based provider of the proposed modification or amendment at least forty-five (45) days before the contract modification or amendment is executed, unless notice is waived by the community-based provider in writing;

(2) Post a notification of the proposed modification or amendment on the website of the Department of Human Services, on the section of the website related to procurement, at least forty-five (45) days before the execution date of the contract;

(3) Provide the community-based provider an opportunity to comment on the proposed modification or amendment; and

(4) File the proposed contract modification or amendment and all community-based provider comments submitted with the Legislative Council or to the Joint Budget Committee if the General Assembly is in session at least thirty (30) days before the contract modification or amendment is executed.

History. Acts 2013, No. 321, § 1; 2013, No. 1258, § 1.

Amendments. The 2013 amendment by No. 1258 rewrote the section.

Subchapter 11 — Arkansas Coalition for Juvenile Justice Board

9-28-1101. Creation — Board — Members.

(a) There is created the Arkansas Coalition for Juvenile Justice Board.

(b)(1) The board shall consist of a minimum of fifteen (15) members and a maximum of thirty-three (33) members appointed by the Governor.

(2) There shall be no more than five (5) members of the board who are state employees.

(3)(A) There shall be no more than two (2) members of the board who are employees of the Division of Youth Services of the Department of Human Services who are appointed by the Director of the Department of Human Services.

(B) An employee of the division shall serve as a non-voting board member.

(c)(1) Members shall serve for a term of three (3) years.

(2)(A) A member of the board shall not serve more than two (2) consecutive terms.

(B) A former member of the board must wait at least two (2) years after completing two (2) consecutive terms before he or she may return as a member of the board.

(d) The Governor shall designate one (1) member to serve as the chair of the board.

(e) A majority of the board shall constitute a quorum for the transaction of business.

(f) A member shall abstain from a vote if the member or member's organization may benefit from the action voted upon.

History. Acts 2013, No. 1513, § 1.

9-28-1102. Duties.

The Arkansas Coalition for Juvenile Justice Board shall:

(1) Supervise funds directed to the Arkansas Coalition for Juvenile Justice under the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601 et seq., as it existed on January 1, 2013;

(2) Actively pursue federal funding opportunities to address juvenile delinquency, including best practices programs;

(3) Direct and approve funds expended under the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601 et seq., as it existed on January 1, 2013;

(4) Oversee the expenditures of the Department of Youth Services of the Division of Human Services for support staff paid with funds under the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601 et seq., as it existed on January 1, 2013; and

(5)(A) Review reports, minutes, and plans submitted by appointed groups, committees, and subcommittees focused on the four (4) core requirements of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601 et seq., as it existed on January 1, 2013.

(B) Groups, committees, and subcommittees of the General Assembly or the office of the Governor are not required to submit reports, minutes, or plans to the board.

History. Acts 2013, No. 1513, § 1.

9-28-1103. Support agency.

(a) The Arkansas Coalition for Juvenile Justice Board may contract with the Department of Human Services to provide support services for the board and the board's activities under the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601 et seq., as it existed on January 1, 2013.

(b) The board shall provide the department with notice of the department's failure to comply with the core requirements of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601 et seq., as it existed on January 1, 2013, which results in the loss of funding before the board terminates a contract with the department for support services.

History. Acts 2013, No. 1513, § 1.

9-28-1104. Reports.

(a) The Arkansas Coalition for Juvenile Justice Board shall report on the activities of the board at least once each quarter to the Governor, the Senate Interim Committee on Children and Youth, and the House Committee on Aging, Children and Youth, Legislative and Military Affairs.

(b) The Arkansas Coalition for Juvenile Justice Board shall submit the state juvenile justice plan, including an explanation of any changes made to the plan, to the Governor and the General Assembly no later than July 1, 2013, and every two (2) years thereafter.

History. Acts 2013, No. 1513, § 1.

CHAPTER 29
INTERSTATE COMPACTS

SUBCHAPTER.
2. Interstate Compact on the Placement of Children.

Subchapter 2 — Interstate Compact on the Placement of Children

SECTION.
9-29-201. Text of Compact.

9-29-201. Text of Compact.

The Interstate Compact on the Placement of Children is enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

ARTICLE I

Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangement for the care of children will be promoted.

ARTICLE II

Definitions

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof, a court of a party state, a person, corporation, association, charitable

agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(c) "Receiving state" means the state to which a child is sent, brought or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons;

(d) "Placement" means:

(1) The arrangement for the care of a child in a family, free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility; and

(2) The arrangement for the care of a child in the home of his or her parent, other relative, or non-agency guardian in a receiving state when the sending agency is any entity other than a parent, relative, guardian or non-agency guardian making the arrangement for care as a plan exempt under Article VIII(a) of the compact.

(e)(1) "Foster care" means the care of a child on a twenty-four-hour-a-day basis away from the home of the child's parent or parents. The care may be by a relative of the child, by a non-related individual, by a group home, or by a residential facility or any other entity.

(2) In addition, if twenty-four-hour-a-day care is provided by the child's parents by reason of a court ordered placement and not by virtue of the parent-child relationship, the care is foster care.

(3) "Foster care" shall not include placement in a residential facility by a parent if a child welfare agency or court is not involved with the parent or child through an open case or investigation.

(f)(1) "Priority placement" means whenever a court, upon request or on its own motion or where court approval is required, determines that a proposed priority placement of a child from one (1) state into another state is necessary because placement is with a relative and:

(A) The child is under four (4) years of age, including older siblings sought to be placed with the same proposed placement;

(B) The child is in an emergency placement;

(C) The court finds that the child has a substantial relationship with the proposed placement resource; or

(D) There is an unexpected dependency due to a sudden or recent incarceration, incapacitation, or death of a parent or guardian.

(2) The state agency has thirty (30) days to complete a request for a priority placement.

(3) Requests for placement shall not be expedited or given priority except as outlined in this subsection.

(g) "Home study" means a written report that is obtained after an investigation of a household and that may include a criminal background check, including a fingerprint-based criminal background check in the national crime information database and a local criminal background check on any person in the household sixteen (16) years of age and older.

ARTICLE III

Conditions for Placement

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child;

(2) The identity and address or addresses of the parents or legal guardian;

(3) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

(e) (1) If the home study is denied, the sending state agency shall present the home study to the juvenile division judge in the sending state.

(2) The sending state juvenile division judge shall review the home study and make specific written findings of fact regarding the concerns outlined in the home study.

(3) If the sending state juvenile division court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement.

ARTICLE IV

Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V

Retention of Jurisdiction

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one (1) or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI

Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

1. Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
2. Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII

Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII

Limitations

This compact shall not apply to:

(a)(1) Except as provided under subdivision (a)(2) of this section, the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(2) If the guardianship is established as a prelude to a non-relative adoption or to avoid compliance with this compact, the guardian shall comply with this compact.

(b) Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX

Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Common-

wealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two (2) years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X

Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History. Acts 1979, No. 677, § 1; A.S.A. 1947, § 83-1201; Acts 2003, No. 1809, § 15; 2007, No. 372, § 1; 2013, No. 751, § 1.

Amendments. The 2013 amendment, in Article II, added (e)(3), and rewrote (f).

CHAPTER 30

CHILD ABUSE AND NEGLECT PREVENTION ACT

SECTION.

A.C.R.C. Notes. Acts 2013, No. 528, § 5, provided: "The State Child Abuse and Neglect Prevention Board, the Department of Health, and the Department of Human Services shall provide recommendations to the General Assembly on or before October 1, 2013, about whether to pursue one (1) or more memoranda of understanding with other state agencies to include home visiting outcome data in state longitudinal data systems."

Effective Dates. Acts 2013, No. 528, § 6: Mar. 28, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the home visiting networks provide important services to Arkansas's most vulnerable citizens, our infants and

toddlers; that the agencies administering home visiting programs need to ensure the accountability of these programs; and that these changes need to be made immediately so that planning and coordination among the agencies comply in a timely manner with the reporting requirements. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

9-30-105. Powers and duties of board.

(a) The State Child Abuse and Neglect Prevention Board shall:

(1) Meet not fewer than two (2) times annually;

(2) Establish a procedure for the annual internal evaluation of the functions, responsibilities, and performance of the board;

(3) Adopt rules necessary for the implementation of this chapter; and

(4) In cooperation with the Department of Health and the Department of Human Services, adopt rules to implement a home visitation program under § 20-78-901 et seq.

(b) Regarding the administration of the Children's Trust Fund, the board shall:

(1) Promulgate regulations prescribing the procedure for establishing local councils;

(2) Provide for the coordination and exchange of information on the establishment and maintenance of local councils and prevention programs;

(3) Develop and publicize criteria for the distribution of Children's Trust Fund money under § 9-30-106;

(4) Monitor the expenditure of Children's Trust Fund money by persons, groups, and entities who receive Children's Trust Fund money from the board; and

(5) Provide statewide educational and public information seminars for the purpose of developing appropriate public awareness regarding the problems of child abuse and neglect, encourage professional persons and groups to recognize and deal with problems of child abuse and neglect, make information about the problems of child abuse and neglect available to the public and organizations and agencies that deal with problems of child abuse and neglect, and encourage the development of community prevention programs.

(c) Regarding the administration of the One Percent to Prevent Fund, to the extent funding is appropriated and available, the board shall:

(1) Develop and implement parenting-from-prison programs with preference given to facilities where parenting-from-prison programs exist or where community-based services are available;

(2) Develop and implement a post-release parenting program for parents who have been recently released from a detention or correctional facility in communities that can establish a need for the services;

(3) Develop and implement a program for the children of prisoners in communities that can establish a need for the services;

(4) Develop and implement other services and programs as needed that prevent children of prisoners from becoming future prisoners;

(5) Provide training, quality assurance, and technical assistance for each of the services and programs funded under the One Percent to Prevent Fund;

(6) Provide for the evaluation by an independent source of all services and programs funded by the One Percent to Prevent Fund; and

(7) On or before October 1 of each year, provide an annual report to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs summarizing the evaluations of the One Percent to Prevent Fund.

(d) The board may enter into contracts with any person, group of persons, or legal entity to fulfill the requirements of this section.

(e) All books, records, and documents pertaining to the board or the performance of any official function of the board shall be public records and open to the public at all reasonable times.

History. Acts 1987, No. 397, §§ 5, 7; 2003, No. 1224, § 2; 2013, No. 528, § 1.

Amendments. The 2013 amendment substituted "Adopt rules" for "Promulgate regulations" in (a)(3); and added (a)(4).

CHAPTER 32

CHILD WELFARE

SUBCHAPTER.

2. Arkansas Child Welfare Public Accountability Act.

Subchapter 2 — Arkansas Child Welfare Public Accountability Act

9-32-202. Legislative findings.

To enhance the public's access to child welfare program performance indicators, to raise the public's awareness of the child welfare program's client outcomes, to enable the General Assembly to monitor and assess the performance of the Division of Children and Family Services of the Department of Human Services, Division of Behavioral Health Services of the Department of Human Services, and Division of Youth Services of

the Department of Human Services, and to specifically monitor the compliance of the Division of Children and Family Services of the Department of Human Services with court-ordered settlement agreements and compliance with state and federal regulations, the General Assembly finds that special and extraordinary provisions for legislative oversight of the child welfare system should be established.

History. Acts 1995, No. 1222, § 2; 2001, No. 1727, § 1; 2013, No. 980, § 1.

Amendments. The 2013 amendment substituted "Behavioral" for "Mental."

9-32-203. Quarterly performance reports.

(a)(1) The Division of Youth Services of the Department of Human Services, the Division of Behavioral Health of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services are hereby directed to issue to the Senate Interim Committee on Children and Youth a quarterly report on the performance of the child welfare system.

(2) These quarterly reports will be known as the "Division of Youth Services Quarterly Performance Report", the "Division of Behavioral Health Quarterly Performance Report", and the "Division of Children and Family Services of the Department of Human Services Quarterly Performance Report" and shall be transmitted to the Senate Interim Committee on Children and Youth no later than sixty (60) calendar days after the end of each calendar quarter.

(b) The Division of Youth Services Quarterly Performance Report, the Division of Behavioral Health Quarterly Performance Report, and the Division of Children and Family Services of the Department of Human Services Quarterly Performance Report shall contain, but not be limited to:

(1) Client outcome information;

(2) Case status information;

(3) Compliance information;

(4) Management indicators; and

(5) Other data agreed to by the Senate Interim Committee on Children and Youth, the Division of Behavioral Health, the Division of Children and Family Services of the Department of Human Services, and the Division of Youth Services.

(c) The Division of Behavioral Health shall report information by mental health catchment areas with actual totals.

(d)(1) The Division of Children and Family Services of the Department of Human Services shall report on the number of children in foster care who experienced two (2) or more placements in care and the number of children in foster care who have run away at the end of each quarter.

(2) The data shall include, but not be limited to, the number of placements, the race and age of the children experiencing multiple moves, and runaway status.

(3) This data shall be reported by regional areas in the annual report.

(e)(1) The Division of Children and Family Services of the Department of Human Services shall report on the fatality or near fatality of a child that is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq.

(2) The data on a reported fatality or near fatality shall include the:

(A) Age, race, and gender of the child;

(B) Date of the child's death or incident;

(C) Allegations or preliminary cause of death or incident;

(D) County and type of placement of the child at the time of the incident;

(E) Generic relationship of the alleged offender to child;

(F) Agency conducting the investigation;

(G) Legal action by the department; and

(H) Services offered or provided by the department presently and in the past.

(3) The data of a fatality shall also include the name of the child.

(f)(1) The department shall report Child Abuse Hotline reports received on a child in the custody of the department, and the department may identify if the child maltreatment act or omission occurred before or after the child was placed in the custody of the department.

(2) The data on a report of maltreatment on a foster child shall include the:

(A) Age, race, and gender of the child;

(B) Allegations of maltreatment;

(C) County and type of placement of the child at the time of the incident;

(D) Generic relationship of the alleged offender to the child; and

(E) Action taken by the department.

(g)(1) The department shall report when a child dies if that child was in an out-of-home placement as defined under § 9-27-303(39).

(2) The data on the death of a child in an out-of-home placement shall include the:

(A) Age, race, and gender of the child;

(B) Date of the child's death;

(C) Preliminary cause of death;

(D) County and type of placement of the child at the time of the incident; and

(F) Action by the department.

(h) The department shall report any noncase-specific recommendations of the department's Child Death Review Committee.

History. Acts 1995, No. 1222, § 3; 1997, No. 312, § 4; 2001, No. 1727, § 2; 2003, No. 178, § 1; 2003, No. 1809, § 16; 2009, No. 674, § 2; 2013, No. 1181, § 2.

Amendments. The 2013 amendment inserted "type of" before "placement" in (e)(2)(D) and (f)(2)(C); and added "and the department . . . custody of the department" at the end of (f)(1).

9-32-204. Annual performance reports — Arkansas Child Welfare Report Card.

(a)(1)(A) The Division of Youth Services of the Department of Human Services, the Division of Behavioral Health of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services shall issue an annual report on the performance of the child welfare system on a county-by-county basis.

(B) The Division of Behavioral Health will report information by mental health catchment areas with state totals.

(2) This annual report will be known as the "Arkansas Child Welfare Report Card".

(b) The Arkansas Child Welfare Report Card shall contain, but not be limited to, for each county and the state as a whole:

(1) Client outcome information;

(2) Case status information;

(3) Compliance information;

(4) Management indicators; and

(5) Other data specified by the Senate Interim Committee on Children and Youth.

(c) The Arkansas Child Welfare Report Card shall be published and transmitted to the Senate Interim Committee on Children and Youth no later than December 1 of each year, and it must be published in a format that can be easily understood by the general public.

(d)(1) The Division of Children and Family Services of the Department of Human Services shall report on the fatality or near fatality of a child that is reported to the Child Abuse Hotline under the Child Maltreatment Act, § 12-18-101 et seq.

(2) The data on a reported fatality or near fatality shall include the:

(A) Age, race, and gender of the child;

(B) Date of the child's death or incident;

(C) Allegations or preliminary cause of death or incident;

(D) County and type of placement of the child at the time of the incident;

(E) Generic relationship of the alleged offender to the child;

(F) Agency conducting investigation;

(G) Legal action by the department; and

(H) Services offered or provided by the department presently and in the past.

(3) The data of a fatality shall also include the name of the child.

(e)(1) The department shall report hotline reports received on a child in the custody of the department, and the department may identify if the child maltreatment act or omission occurred before or after the child was placed in the custody of the department.

(2) The data on a report of maltreatment on a foster child shall include the:

(A) Age, race, and gender of the child;

(B) Allegations of maltreatment;
(C) County and type of placement of the child at time of incident;
(D) Generic relationship of the alleged offender to the child; and
(E) Action taken by the department.

(f)(1) The department shall report when a child dies if that child was in an out-of-home placement as defined under § 9-27-303(39).

(2) The data on the death of a child in an out-of-home placement shall include the:
(A) Age, race, and gender of the child;
(B) Date of the child's death;
(C) Preliminary cause of death;
(D) County and type of placement of the child at the time of the incident; and
(F) Action by the department.

(g) The department shall place any noncase-specific recommendations of the department's Child Death Review Committee on the department's web page.

History. Acts 1995, No. 1222, § 4; 1997, No. 312, § 5; 2001, No. 1727, § 3; 2009, No. 674, § 3; 2013, No. 1181, § 3.

Amendments. The 2013 amendment inserted "type of" before "placement" in (d)(2)(D), (e)(2)(C), and (f)(2)(D) and added "and the department...custody of the department" at the end of (e)(1).

9-32-205. Annual performance audits.

(a) The Senate Interim Committee on Children and Youth shall conduct annual performance audits of the Division of Youth Services of the Department of Human Services, the Division of Mental Health Services of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services.

(b) To establish performance auditing standards, the Senate Interim Committee on Children and Youth shall use for guidance the Standards for Audit of Governmental Organizations, Programs, Activities and Functions (revised), published by the United States General Accounting Office.

(c) The performance audits shall contain, but not be limited to, a complete assessment of the compliance of the Division of Youth Services, the Division of Behavioral Health Services, and the Division of Children and Family Services of the Department of Human Services with state and federal regulations and with the terms and conditions of the court-ordered settlement agreement.

(d) To conduct the performance audit, the Senate Interim Committee on Children and Youth may utilize surveys, client interviews, and other research methodology that it deems necessary.

History. Acts 1995, No. 1222, § 5; 1997, No. 312, § 6; 2001, No. 1727, § 4; 2013, No. 980, §§ 2, 3.

Amendments. The 2013 amendment substituted "Behavioral" for "Mental" in (a) and (c).

9-32-206. Provision of information and assistance.

(a) The Division of Youth Services of the Department of Human Services, the Division of Behavioral Health Services of the Department of Human Services, and the Division of Children and Family Services of the Department of Human Services shall make available to the Senate Interim Committee on Children and Youth a list of all reports the unit submits to the Director of the Department of Human Services.

(b) Under the direction of the director, the Division of Youth Services, the Division of Behavioral Health Services, and the Division of Children and Family Services of the Department of Human Services shall work cooperatively with and provide any necessary assistance to the Senate Interim Committee on Children and Youth.

(c) Notwithstanding any agency rules or regulations to the contrary, the Division of Youth Services, the Division of Behavioral Health Services, and the Division of Children and Family Services of the Department of Human Services shall furnish information to members of the General Assembly, legislative staff, or legislative committees immediately upon request.

History. Acts 1995, No. 1222, § 6; 1997, No. 312, § 7; 2001, No. 1727, § 5; 2013, No. 980, § 4.

Amendments. The 2013 amendment substituted "Behavioral" for "Mental" throughout the section.

CHAPTER 33

YOUTH VIOLENCE

SUBCHAPTER.

Subchapter 2 — Common Ground Program

SECTION.

9-33-201 — 9-33-206. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2013, No. 1152, § 9. The subchapter was derived from the following sources:

9-33-201. Acts 1997, No. 745, § 1.
9-33-202. Acts 1997, No. 745, § 2.
9-33-203. Acts 1997, No. 745, § 3.
9-33-204. Acts 1997, No. 745, § 4; 1999, No. 1513, § 5.
9-33-205. Acts 1997, No. 745, § 5; 2001, No. 1553, § 21.
9-33-206. Acts 1997, No. 745, § 6.

Subchapter 3 — After-School Enrichment Program

SECTION.

9-33-301 — 9-33-304. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2013, No. 1152, § 10. The subchapter was derived from the following sources:

9-33-301. Acts 1999, No. 1513, § 1.

9-33-302. Acts 1999, No. 1513, § 2.

9-33-303. Acts 1999, No. 1513, § 3.

9-33-304. Acts 1999, No. 1513, § 4; 2007, No. 827, § 125.

CHAPTER 34

VOLUNTARY PLACEMENT OF A CHILD

SUBCHAPTER.

2. Voluntary Delivery of a Child.

Subchapter 2 — Voluntary Delivery of a Child

SECTION.

9-34-202. Delivery to medical provider or law enforcement agency.

9-34-202. Delivery to medical provider or law enforcement agency.

(a) Any medical provider or law enforcement agency shall without a court order take possession of a child who is thirty (30) days old or younger if the child is left with or voluntarily delivered to the medical provider or law enforcement agency by the child's parent who does not express an intent to return for the child.

(b)(1) A medical provider or law enforcement agency that takes possession of a child under subsection (a) of this section shall perform any act necessary to protect the physical health and safety of the child.

(2) A medical provider or law enforcement agency shall keep the identity of a parent who relinquishes a child under this section confidential and shall not release or otherwise make the identity of the parent available except to a:

(A) Law enforcement agency investigating abuse or neglect of the child that was committed before the child was delivered to the medical provider or law enforcement agency; or

(B) Prosecuting attorney pursuing charges against a parent for abuse or neglect of the child that was committed before the child was delivered to the medical provider or law enforcement agency.

(c) A medical provider or law enforcement agency shall incur no civil or criminal liability for any good faith acts or omissions performed pursuant to this section.

History. Acts 2001, No. 236, § 1; 2013, No. 1004, § 1.

Amendments. The 2013 amendment added (b)(2).